

**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

THE VILLAGE OF OAK LAWN

and

**OAK LAWN PROFESSIONAL
FIREFIGHTERS ASSOCIATION,
LOCAL 3405, IAFF**

CASE NOS.: S-MA-13-033
Arb. Ref. 12.263
(Interest Arbitration –
Firefighter and Officer
Agreements)

OPINION AND AWARD

APPEARANCES:

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Melissa D. Sobota, Esq.

For the Union: Lisa B. Moss, Esq.
Susan M. Matta, Esq.

Date of Award: July 7, 2014

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I. BACKGROUND

This is an interest arbitration proceeding between the Village of Oak Lawn (“Village”) and Oak Lawn Firefighters Local 3405, IAFF (“Union” or “Local 3405”) pursuant to Section 14 of the Illinois Public Labor Relations Act (“IPLRA”) to set the terms of two collective bargaining agreements for two bargaining units (“Firefighter Agreement” and “Officer Agreement”).¹

The Firefighter Agreement covers ranks of firefighter, engineer and lieutenant.²

The Officer Agreement covers the ranks of battalion chief, fire captain, bureau chief and any administrative rank but excluding fire chief, deputy chief and division chiefs.³

The parties’ predecessor Agreements were for the period January 1, 2007 through December 31, 2010 and both rolled over until December 31, 2011 because neither party reopened negotiations.⁴

This dispute is for the two Agreements effective January 1, 2012.

II. ISSUES IN DISPUTE

From the evidence, briefs and the parties’ arguments, the following issues are in dispute.⁵

¹ 5 ILCS 315/14.

The parties have waived the statutory tri-partite panel established by Section 14 of the IPLRA. Tr. 3.

² Firefighter Agreement at Article I.

³ Officer Agreement at Article I.

⁴ 2007-2010 Firefighter Agreement at Section 11.5; 2007-2010 Officer Agreement at Section 10.5; Tr. 5-6, 773; Union Brief at 9; Village Brief at 131.

⁵ See Union Final Offer (Firefighter Agreement); Union Exh. 1 at Tab 28; Village Amended Final Offer; Village Exh. 1; Village Brief at 1-186; Union Brief at 1-132; Tr. 1-871.

A. Firefighter Agreement

1. Duration
2. Salaries
3. Retroactivity
4. Minimum Manning
5. Wellness Fitness Initiative
6. Paid Time Off
7. IRC 457 Plan
8. Company Inspections
9. Sick Leave Payout Upon Retirement Language
10. Education and Training
11. Health Insurance.

B. Officer Agreement

1. Common issues with the Firefighter Agreement
2. Retroactivity
3. Longevity
4. Extra Duties and Responsibilities.

III. THE STATUTORY FACTORS

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

IV. OVERVIEW

A. The Interest Arbitration Process

Given the high public scrutiny of these disputes and what I perceive to be a complete misunderstanding by many of the interest arbitration and dispute resolution processes and what those processes can and cannot do, I have found it necessary to repeatedly try to explain the nature of these processes. This may sound repetitive to some who have heard me or had to read this explanation before. However, I believe this must be repeatedly stressed in different cases so that parties who go into this process and put their fates into the hands of a third party rather than chart their own fates fully understand what they are getting into.

The interest arbitration process is very conservative; frowns upon breakthroughs or changes to the *status quo*; and places a heavy burden on the party seeking a breakthrough or change to the *status quo* to demonstrate that the ex-

isting system is broken. See my award in *Highland Park and Teamsters Local 700 (Sergeants Unit)*, S-MA-09-273 (2013) at 5 [emphasis in original]:⁶

In simple terms, the interest arbitration process is *very* conservative; frowns upon breakthroughs; and imposes a burden on the party seeking a change to show that the existing system is broken and therefore in need of change (which means that “good ideas” alone to make something work better are not good enough to meet this burden to show that an existing term or condition is broken). The rationale for this approach is that the parties should negotiate their own terms and conditions and the process of interest arbitration – where an outsider imposes terms and conditions of employment on the parties – must be the *absolute* last resort.

...

B. External Comparability

Section 14(h)(4)(A) of the IPLRA lists as a potential “applicable” factor the “[c]omparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally: ... [i]n public employment in comparable communities.”

The parties have made extensive comparability arguments, but they are in dispute over the set of comparable communities that could be used for comparisons to the Village.

The parties agreed that Berwyn, Lombard, Oak Park and Park Ridge are comparable to the Village.⁷ However the parties are in disagreement over other

⁶ www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/S-MA-09-273.pdf
Most awards cited in this opinion can be found at the website maintained by the Illinois Labor Relations Board:

www.state.il.us/ilrb/subsections/arbitration/IntArbAwardSummary.htm

⁷ Union Brief at 17; Village Brief at 84-85.

communities as being comparable to the Village. The Union contends that Arlington Heights, Bolingbrook, Elgin, Evanston, Hoffman Estates, Lisle-Woodridge Fire Protection District, Mount Prospect, Naperville, Orland Fire Protection District and Skokie are comparable.⁸ The Village contends that only Buffalo Grove, Des Plaines, Downers Grove and Niles are to added to the list of agreed-upon comparable communities.⁹

The Union argues that its set of comparables must be used because those communities were previously decided as comparable in an interest arbitration between the parties.¹⁰ For the moment, the Union's argument that the comparables have been previously determined must be put to the side.

Since the passage of the IPLRA, parties in interest arbitrations have placed heavy weight on the external comparability factor in making their arguments for the establishment of wages, hours and working conditions. And the parties make those arguments here.¹¹

As interest arbitrations followed the passage of the IPLRA, the arbitrators (including the undersigned) utilized the external comparability factor as *the* driving force for deciding the disputes.¹² The arbitrators did so, even though

⁸ Union Brief at 17.

⁹ Village Brief at 84-85.

¹⁰ Union Brief at 17-18, citing *Village of Oak Lawn and Oak Lawn Professional Firefighters Association, IAFF, Local 3405* (Hill, 2004) (Union Exh. 3A before Tab 1).

¹¹ See Village Brief at 84-94, 139-144, 147, 149-150, 154-155, 157-159, 169, 175, 179-180; Union Brief at 15-20, 27, 32-39, 42, 97, 116, where the parties make detailed analysis of external comparables in support their positions.

¹² See Benn, "A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act," *Illinois Public Employee Relations Report*, Vol. 15, No. 4 (Autumn 1998) at 6, note 4 [emphasis added]:

... The parties in these proceedings often choose to give comparability the most attention. See Peter Feuille, "Compulsory Interest Arbitration Comes to Illinois," *Illinois Public Employee Relations Report*, Spring, 1986 at 2 ("Based on what has happened in other states, most of the parties' supporting evidence will fall

[footnote continued]

the IPLRA did not define “comparable communities” and that factor was just part of one of the eight factors listed in Section 14(h). And even though there was no definition for “comparable communities”, as the years went by the parties got creative in defining “comparable communities” and how to use them through application of what appeared to be randomly chosen geographic circles, medians, averages, ranking techniques, etc.¹³

What the parties appeared to be doing was determining comparability with the bottom line that a community was “comparable” if it paid or provided benefits at levels which were comparable to what the party was seeking for the community involved in the interest arbitration proceeding. There is nothing wrong with that – that is just good advocacy. See my award in *Village of Streamwood*, *supra* at 21-22:

[continuation of footnote]

under the comparability, ability to pay, and cost of living criteria. ... [o]f these three, comparability usually is the most important.”).

See also, my awards in *Village of Streamwood and Laborers International Union of North America*, S-MA-89-89 (1989); *City of Springfield and Policemen's Benevolent and Protective Association, Unit No. 5*, S-MA-89-74 (1990); *City of Countryside and Illinois Fraternal Order of Police Labor Council*, S-MA-92-155 (1994); *City of Naperville and Illinois Fraternal Order of Police Labor Council*, S-MA-92-98 (1994); *Village of Libertyville and Illinois Fraternal Order of Police Labor Council*, S-MA-93-148 (1995); *Village of Algonquin and Metropolitan Alliance of Police*, S-MA-95-85 (1996); *County of Will/Will County Sheriff and MAP Chapter #123*, S-MA-00-123 (2002) and *County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police Labor Council*, S-MA-00-285 (2002), where issues were decided by my placing heavy emphasis on external comparable communities.

¹³ There was even a “scientific” methodology attempted. *Agglomerative Hierarchical Cluster Analysis* from Bingham and Felbinger, *Municipal Labor Negotiations: Identifying Comparable Cities*, J. Collective Negotiations, Vol. 18(3) 193-207 (1989) which “explains a method for systematically and empirically identifying comparable communities for local labor disputes” which used 33 variables and were subjected to a factor analysis ultimately resulting in seven factors (poverty/dependence, working class, aging, manufacturing, density, bedroom and size) with an observation that “... nothing (sic) is more arbitrary than arbitrators”. *Id.* at 197. The problem with that method (aside from its castigation of arbitrators, which was not wise if the authors wanted arbitrators to use the methodology) was that when the methodology was applied, suburban Chicago communities, were more comparable to Springfield than Urbana, Champaign and Normal – a somewhat dubious result. *City of Springfield*, *supra* at 13, note 15.

It is not unusual in interest arbitrations for parties to choose for comparison purposes those communities supportive of their respective positions. The concept of a true “comparable” is often times elusive to the fact finder. Differences due to geography, population, department size, budgetary constraints, future financial well-being, and a myriad of other factors often lead to the conclusion that true reliable comparables cannot be found. The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more towards hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.

My approach for selecting comparable communities focused on the Section 14(h)(2)’s “[s]tipulations of the parties” factor. Utilizing that section, I looked to see if the parties agreed upon – *i.e.*, “stipulated” – to any communities as being “comparable” and, if they did, I used those communities to set a range and then looked at reasonably relevant factors such as population, distance from community, department size, number of employees, median income of community, sales tax revenue, EAV, general fund revenue, etc. (or any other reasonable factors utilized by both parties in a proceeding in making their arguments – again, amounting to a “stipulation”) to see how often contested communities fell within or came close to the range of communities agreed upon by the parties as being comparable. If there were sufficient contacts with the range of agreed-upon communities, then those particular contested communities were found by me to be “comparable communities” for that case.¹⁴

But comparability was still *the* driving factor for these cases. I just used what I thought was a reasonable method for determining comparability when the IPLRA gave no guidance as to how to do so, except for telling interest arbi-

¹⁴ “A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act,” *supra*.

trators in Section 14(h) that they *could* consider – through use of the phrase “as applicable” and not a phrase like “shall consider” – “comparable communities” as one of the factors. However, given the weight that was attached to comparables as the interest arbitration awards rolled out after passage of the IPLRA, once those comparable communities were established, the direction of the decision was, for all purposes, over as comparability received primary, if not determinative weight.

And still putting aside the Union’s argument that the set of comparables was previously determined in an interest arbitration between the parties, prior to 2008 the analysis I have described above would have been used to determine the set of comparables in this case.

But then the Great Recession of 2008 hit and crushed the economy. Revenue streams dried up, massive layoffs occurred and parties in the public sector had to scramble to deal with the new landscape.

Even though I was a staunch advocate for placing heavy reliance on external comparability, after the Great Recession hit I questioned the heavy reliance on external comparables to establish wage and benefit rates in one community based on the experiences in other communities when the contracts that were being used for comparison purposes were negotiated before the Great Recession or were in communities that may not have all fared the same in dealing with the Great Recession and its aftermath. See my award in *City of Highland Park and Illinois Council of Police (Patrol Unit)*, at 13-15, 18 [citations omitted]:¹⁵

... [S]ince the jolt of the Great Recession which started in 2008 and until the economy sufficiently recovers, I have, for

¹⁵ www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/Highland%20Park.pdf

now, turned away from looking at external comparables to decide these cases. In a time of (and following) such a massive economic upheaval, it just does not make sense to me to impose wage and benefit rates on one community based upon experiences in other communities where contracts in those other communities may have been negotiated before the Great Recession, new contracts following the Great Recession may have been negotiated or imposed on a non-precedential basis to buffer against the uncertainties caused by the Great Recession, or where the communities in question may have experienced the long-term effects of the Great Recession in different ways.

* * *

I am still not persuaded that the “good old days” are back “where external comparables play an important role.” The economy is no doubt recovering – but that recovery is on a sluggish, shaky and roller coaster rebound.

* * *

Section 14(h) provides that I look at “... the following factors, *as applicable*” [emphasis added]. As far as I am concerned, we are not yet at a point in the recovery from the Great Recession to cause these cases to again be decided so heavily on external comparability, which literally amounts to setting a wage or benefit rate in one community based upon how other communities set their rates (either voluntarily or through the interest arbitration process) when the experiences of the comparable communities may be vastly different coming out of the Great Recession and when, in [then-Federal Reserve Board] Chairman [Ben] Bernanke’s words [in February 2014], “... the recovery clearly remains incomplete ... [and is a] slow recovery”... As far as the economy is concerned, these kinds of reports do not cause one to be confident that we are really out of the woods.

Since the Great Recession began in 2008, my focus in deciding these disputes shifted to the economy (as best reflected through the cost of living factor) along with the overall compensation factor and internal (as opposed to ex-

ternal) comparability so as to better reflect what is going on in the particular community where the interest arbitration is occurring.¹⁶

As I stated in the *Highland Park Patrol Unit* award quoted *supra* (which issued February 8, 2014), I am still not of the opinion that the economy has

¹⁶ See my award in *City of Rock Island*, *supra* at 16-18 [emphasis in original]:

... As I have discussed in other interest arbitration awards, while external comparability was at one time (prior to the Great Recession) *the* driving factor in resolving wage disputes in interest arbitrations (and I was a big proponent of use of that factor), since the crash and until there is a sufficient recovery, I have turned to more reliable factors geared towards the state of the economy – particularly the cost of living. See my recent award in *City of Highland Park [and Teamsters Local 700 (Sergeants Unit)]*, S-MA-09-273 (February 25, 2013)] at 11-12 [citations and footnotes omitted]:

The external comparability factor has been the source of some controversy since the country was hit with the Great Recession in 2008. As the Union points out, I have previously found that the impact of the Great Recession has caused external comparability to take a back seat to factors more geared to reflect the status of the economy, such as the cost-of-living. I do not know how the non-precedential comparable communities chosen by the parties did during the Great Recession. Were some hit harder than others? How did their experiences compare with the City's experience? Were contracts they negotiated with their various labor organizations negotiated on a non-precedential basis and therefore are of questionable reliance? While the factors in Section 14(h) are vague and in many cases not defined (e.g., what *exactly* are "comparable communities" and what *exactly* are "[s]uch other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment"?), under Section 14(h) those vague factors are to be chosen for analysis only "... as applicable".

* * *

Of late and until the economy sufficiently turns around so that interest arbitrators and the parties can again make "apples to apples" comparisons for comparability purposes, my focus has been on the best indicator of how the economy is doing – i.e., the cost-of-living factor. ...

I am still not yet satisfied that the economy has sufficiently recovered to return to a time when one municipality's fate should be determined by the outcome of interest arbitration proceedings or negotiations in other communities – even if those other communities are technically "comparable". ... I know there is disagreement on the use of external comparables, but I am just not convinced that we are out of the woods yet ... to conclude that the economy is on sufficiently sound footing to again give such great – indeed, determinative – weight based on what happened in communities outside of the one in dispute.

I find that in this case that the external comparability factor is not an "applicable" factor under Section 14(h) and I give it no weight.

See also, *Highland Park Patrol Unit*, *supra* at 20-28.

sufficiently recovered from the Great Recession to allow external comparability to again drive these cases like it did before the Great Recession. Section 14(h) provides that I look at “... the following factors, *as applicable* ...” [emphasis added]. As far as I am concerned, we are not yet there for the return of external comparability – where the experiences in one municipality can literally dictate the result in another municipality – as an “applicable factor” for these cases. For now, external comparability is not, in my opinion, an “applicable” factor.¹⁷

What does my hiatus on use of external comparability do for the collective bargaining process? In theory, it forces *the parties* to settle these disputes with less of a need to go through long and drawn-out interest arbitration proceedings. As the parties tip-toe through the aftermath of the Great Recession, the wild-card external comparability factor is best kept out of the picture. The parties know what the cost of living is and what the economic projections show; they know what has happened or is going to happen internally in their communities; and they know the overall impact of the various wage and benefit offers on the bargaining units at issue and on other employees employed by the community. And they also know that the interest arbitrator (if doing the job correctly by consistently following his or her own prior decisions to provide sta-

¹⁷ “Wisdom too often never comes, and so one ought not to reject it merely because it comes late.” *Henslee v. Union Planters National Bank & Trust Co.*, 335 U.S. 595, 600 (1949) (Frankfurter, dissenting).

Maybe the interest arbitrators and the parties simply put too much emphasis on one factor in deciding these cases and that emphasis left the process rudderless at a time when direction was sorely needed as the Great Recession caused such havoc on so many for so long. But the decisive weight we all gave to the external comparability factor must cause a second look (at least it does for me) as to why the successes or failures in one community should *drive* the results in another community which, although “comparable” may in reality have had different experiences (both positive and negative) during and coming out of the Great Recession.

bility) is not going to award a breakthrough or change the *status quo* either through establishing a new benefit or reducing an existing one unless there is a showing that the existing system is broken – which is a heavy burden to meet. And that means that through prior awards of the interest arbitrator, the arbitrator has effectively drawn a circle – an outer boundary – within which the parties can navigate and negotiate and if there are any major changes outside of that boundary, *the parties* will have to bargain and trade for those changes because an interest arbitrator is not going to give it to them.

As I have acknowledged before, I recognize that my arbitrator colleagues may differ on this approach and many have returned to (or never left) their heavy lock-step reliance upon external comparability to decide these cases. I respect that. However, since the passage of the IPLRA, as an arbitrator and mediator, I have been involved in many interest arbitration proceedings and negotiations for collective bargaining agreements in the public sector in this state. At this still uncertain and shaky time, I see no other practical way to get through what was a nightmare caused by the Great Recession – one which may really not yet be over. The parties are best situated to determine their fates through negotiations focusing on what is going on as the economy affects conditions in *their* communities. At present, what goes on everywhere else – even in communities “comparable” to their own – should be of lesser concern. Therefore, I just cannot give weight to external comparability and, as I have done in the recent past since the commencement of the Great Recession, will not do so in this case.

V. THE PARTIES' FINAL OFFERS

Prior to the commencement of the hearing in this matter, the parties exchanged final offers, which was done on January 14, 2013, with copies provided to me at the first day of hearing on January 23, 2013.¹⁸

At the commencement of the hearing, the Union moved that I grant its final wage proposals and term of agreement proposals for both Agreements arguing that the Village's final offer proposed wage increases effective July 1, 2011 which was prior to the January 1, 2012 effective date of these Agreements, with the Union further arguing that I had no authority to grant such proposals and with the Union also arguing that other proposals made by the Village were "unlawful".¹⁹

The Village then moved to amend its final offer.²⁰ The Union opposed that amendment.²¹

After the parties submitted argument on the matter, by Order dated April 30, 2013 ("Order"), I granted the Village's Motion To Amend (a copy of the Order is attached to this award as an appendix).

Section 14(g) of the IPLRA provides:

(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the eco-

¹⁸ Village's Motion To Amend Its Last Best Final Offers To The Union For Interest Arbitration ("Village Motion To Amend") at pars. 3-4; Union Opposition To Village Motion To Amend ("Union Opposition") at 1.

¹⁹ Union Opposition at 1-2. *See also*, Tr. 25.

The Village contends that there was never "... an explicit agreement that their [the parties] last best final offer could not be modified ... [and] after a complete review of the Union's documents, there never was such an agreement made." Village Brief at 3, note 16.

²⁰ Village Motion to Amend.

²¹ Union Opposition.

conomic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. ...

In pertinent part and relying upon Section 14(g), I found:²²

Therefore, under the Act, the ultimate call on setting the parameters for submission of final offers is mine. And pursuant to Section 14(g), I have the authority to do so “[a]t or before the conclusion of the hearing ...” The hearing has not yet concluded. I therefore have the authority to allow the Village to amend its final offer. The question is whether I should exercise that authority.

I express no opinion at this time on the Union’s position that some of the Village’s proposals are “... neither permissive, nor mandatory, but unlawful”. I do note that as part of its amended final offer, the Village’s wage offer now takes effect January 1, 2012 rather than in 2011. But if the Union is correct that “... many of the proposals which the Village seeks to modify are neither permissive, nor mandatory, but unlawful”, then my refusal to allow the Village to, in effect, attempt to “correct” those proposals would only serve to force the Village to take what may be “unlawful” positions. That is not my role in these cases. My role is to get the parties to make final offers, present their evidence and arguments and issue an award using the factors in Section 14(h) of the Act. I do not believe that forcing a party into taking a position that allows another party to claim the position is unlawful serves my function to end this dispute and issue an award setting the terms and conditions for the parties’ successor Agreements.

The Village shall therefore be allowed to amend its last best final offer as contained in the April 3, 2013 motion. No further amendments will be allowed.

Given that I permitted the Village the ability to amend its final offer, the Union was also given the same opportunity, which the Union declined.²³

²² Order at 3-4 [footnotes omitted].

²³ Order at 4; Union Exh. 1 at Tab 36 (letter of May 31, 2013).

The Union filed suit in *Oak Lawn Professional Firefighters v. Village of Oak Lawn*, 2013-CH-17335 (Cir. Ct. Cook County) seeking to set aside my ruling. According to the Village, that action “... was subsequently dismissed with prejudice because there had yet to be a final order issued by the Arbitrator in this case.”²⁴

This case shall therefore be decided based upon the offers made in the Union’s Final Offer and the Village’s Amended Final Offer.

VI. DISCUSSION

For economic issues, I am constrained by the IPLRA to select one of the parties’ final offers. I therefore have no ability to set an economic term other than one of the offers made by the parties and for non-economic issues, I am not statutorily required to accept a final offer, but I can fashion a provision different from those offered by the parties.²⁵

Notwithstanding my approach to these cases to gently force the parties to settle their own fates rather having a third party jam something down their throats and then walk away (as described *supra* at IV), that approach did not completely work in this case. Indeed, it failed.

To say the least, this was a hard-fought case with many disputed issues. There were six days of hearing over an approximate 11 month period consuming 871 pages of transcript; boxes of exhibits; unfair labor practice charges; and lengthy briefs (132 pages filed by the Union and 186 pages filed by the Vil-

²⁴ Village Brief at 3, note 16. The Clerk of the Circuit Court of Cook County’s website shows that case was dismissed on November 26, 2013.

²⁵ Section 14(g) of the IPLRA provides that “... [a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).”

lage) with appendices and attachments. There was even the court litigation instituted by the Union over my ruling allowing the Village to amend its final offer (see discussion *supra* at V). And to address all of that, this award exceeds 100 pages. This was a major fight.

There are two agreements in dispute – the Firefighter Agreement and the Officer Agreement. Although there are common and overlapping issues, because there are issues distinct to each contract, the two Agreements will be separately addressed.²⁶

A. The Firefighter Agreement

1. Duration

The Village seeks a three year term, commencing January 1, 2012 with an expiration date of December 31, 2014.²⁷

The Union seeks a four year term, commencing January 1, 2012 with an expiration date of December 31, 2015.²⁸

The Village's proposed term of January 1, 2012 to December 31, 2014 is adopted.

²⁶ On a number of issues, the Union seeks adoption of its positions based on arguments that because the Union views certain proposals made by the Village as packaged, if one part of that package is not adopted, the remainder of the Village's offer must necessarily fall, notwithstanding the merit of those other portions. Again, this was a particularly complicated case and I have done my best to analyze the proposals as made by the parties. However, if any of my determinations in this case can be read as separating out offers – which I do not believe is the case – the ultimate goal has been to bring this very protracted and heated dispute to an end while giving full consideration to the parties' arguments and not basing decisions on technicalities. In the end, interest arbitration like all other forms of labor arbitrations are really problem solving processes. Here the goal is to get collective bargaining agreements in place and allow the parties (and the taxpayers) to move on knowing their rights and obligations. Minor technicalities should not be an impediment to that ultimate goal.

²⁷ Village Amended Offer at 14; Village Brief at 83, 85, 130.

²⁸ Union Final Offer (Firefighter Agreement) at 5-6; Union Brief at 59-64.

The Union's strongest argument is that after long and contentious negotiations and interest arbitration proceedings like these, the parties need a "rest period" and if the Village's proposal is adopted, "the parties will likely return to the bargaining table around the same time the contract is executed ... [and t]o grant the Village's proposal would be akin to requiring the parties to engage in virtually continuous bargaining."²⁹

In the past, I have agreed with that argument – particularly in contentious relationships. However, the uncertainty of the economic recovery from the Great Recession has, of late, often driven me to opt for contracts of shorter duration. See my recent award in *Village of Skokie and Skokie Firefighters Local 3033, IAFF*, S-MA-10-197 (March 31, 2014) at 5-7 where the union's request for a shorter contract duration was adopted [footnotes omitted]:³⁰

In *City of Rock Island and Illinois FOP Labor Council*, S-MA-11-183 (2013) at 5 and quoting my award in *City of Highland Park and Teamsters Local 700 (Sergeants Unit)*, S-MA-09-273 (2013) at 14, I addressed duration of collective bargaining agreements in uncertain economic times [footnotes omitted]:

I have previously recognized a need to give parties a "breather" after difficult and lengthy contract negotiations and therefore have imposed longer contracts. However, I have also recognized that in unstable economic times, shorter contracts or reopeners in the out-years of an agreement are preferable so the parties can adapt to future and unknown ebbs and flows caused by the Great Recession and a struggling and still unknown recovery to more

²⁹ Union Brief at 62-63.

³⁰ www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/S-MA-10-197.pdf

realistically address current existing economic conditions.

We are still in unstable economic times. The country is coming out of the Great Recession, but the recovery is not yet certain.

And that uncertainty of the recovery continues. See my recent award in *City of Highland Park and Illinois Council of Police (Patrol Unit)* (February 8, 2014) at 15-26 quoting a speech by then-Federal Reserve Chairman Ben Bernanke:

The economy is no doubt recovering – but that recovery is on a sluggish, shaky and roller coaster rebound.

In a recent speech to the American Economic Association on January 3, 2014, Federal Reserve Chairman Ben Bernanke reflected on the progress of the economic recovery:

* * *

Despite this progress, the recovery clearly remains incomplete. At 7 percent, the unemployment rate still is elevated. The number of long-term unemployed remains unusually high, and other measures of labor underutilization, such as the number of people who are working part time for economic reasons, have improved less than the unemployment rate. Labor force participation has continued to decline, and, although some of this decline reflects longer-term trends that were in place prior to the crisis, some of it likely reflects potential workers' discouragement about job prospects.

* * *

To this list of reasons for the slow recovery--the effects of the financial crisis, problems in the housing and mortgage markets, weaker-than-expected productivity growth, and events in Europe and elsewhere--I would add one more significant factor--namely, fiscal policy. ...

We are in a slow and uncertain economic recovery from the Great Recession. Although “breathers” are often valuable to give parties the ability to just stay away from each other in the bargaining process so that they can hopefully be more objective during the next round of negotiations, on balance and given the uncertain recovery, the parties should get back to the bargaining table sooner rather than later to address how the terms and conditions of the next Agreement should reflect the slow and yet uncertain economic recovery.

With respect to uncertainty and progress of an economic recovery, not much has really changed since I issued *Village of Skokie* on March 31, 2014. In remarks to the Economic Club of New York on June 11, 2014 and citing the Congressional Budget Office, Treasury Secretary Jacob J. Lew stated:³¹

... [W]e cannot escape the fact that millions of Americans continue to struggle, and their pain reminds us that our work is not yet finished. Unemployment is still too high and economic growth is still too slow. And for too many families this hardly feels like a recovery.

Further, on June 16, 2014, the International Monetary Fund reported that while 2015 looks better, 2014 did not meet hoped-for expectations as “momentum faded” [emphasis added]:³²

1. Near-term growth and jobs. In the early part of this year, as a harsh winter conspired with other factors (including inventory drawdown, a still-struggling housing market, and slower external demand), *momentum faded in the U.S economy*. Recent data, however, suggest a meaningful rebound in activity is now underway and growth for the remainder of this year and 2015 should well exceed potential. This renewed dynamism, however, provides only a partial offset to the weak first quarter and so *growth is now projected at 2 percent for 2014*, rising to 3 percent in 2015. ... Job growth has been healthy but labor markets are weaker than is implied by the headline unemployment number:

³¹ www.treasury.gov/press-center/press-releases/Pages/jl2421.aspx

³² www.imf.org/external/np/ms/2014/061614.htm

long-term unemployment is high, labor force participation is well below what can be explained by demographic factors, and wages are stagnant. With better growth prospects, the U.S. should see steady progress in job creation. However, headline unemployment is expected to decline only slowly—in part because improving prospects will draw discouraged workers back into the labor force—and long-term unemployment will take time to fall to historic levels.

On June 11, 2014, the New York Times reported that “U.S. Economic Recovery Looks Distant as Growth Stalls.”³³

However, the economic recovery roller coaster ride continued when, less than one month later, the New York Times reported on July 3, 2014:³⁴

U.S. Economy Added 288,000 Jobs in June; Unemployment Rate at 6.1%

The economy accelerated in June, with employers adding 288,000 jobs, well above the rate of hiring recorded in the first five months of 2014 and another sign that growth is finally rebounding.

The Labor Department also said on Thursday that the unemployment rate fell 0.2 percentage point, to 6.1 percent, the lowest since September 2008, when the economy's fortunes turned sharply lower as Lehman Brothers collapsed and the financial crisis ensued.

* * *

The recovery is on a roller coaster ride, literally changing from month to month. For this issue, the point of all of this remains as it existed in *Village of Skokie, supra* at 7, that “[a]lthough ‘breathers’ are often valuable to give parties the ability to just stay away from each other in the bargaining process so that they can hopefully be more objective during the next round of negotiations, on

³³ www.nytimes.com/2014/06/12/business/economy/us-economic-recovery-looks-distant-as-growth-lingers.html?hpw&rref=business&_r=0

³⁴ www.nytimes.com/2014/07/04/business/jobs-data-for-june-released-by-labor-department.html?hp&action=click&pgtype=Homepage&version=LedeSum&module=first-column-region®ion=top-news&WT.nav=top-news&_r=0

balance and given the uncertain recovery, the parties should get back to the bargaining table sooner rather than later to address how the terms and conditions of the next Agreement should reflect the slow and yet uncertain economic recovery.” Views of the recovery are just going up and down in relatively short periods of time. By getting the parties back together sooner than later, the parties are in a better position to deal with the realities on the ground as they exist rather than waiting. And if 2015 is going to be better than 2014, it makes sense to address 2015 at the bargaining table as soon as possible.

The Village’s proposal for a three year Agreement is therefore adopted.³⁵

2. Salaries

a. The Parties’ Offers

The parties propose the following on salaries:³⁶

³⁵ By adopting the Village’s offer on duration, I do so only on the grounds stated above – i.e., the uncertainty of the economic recovery. I do not adopt the Village’s rationale that the term of the Agreements must always be in total sync with the other bargaining units in the Village. Village Brief at 83, 85, 130. I do not have to reach that argument to decide this issue.

³⁶ Village Amended Final Offer at 15; Village Brief at 97; Union Final Offer (Firefighter Agreement) at 1; Union Brief at 24-25.

The Union’s Final Offer contained a 3.0% increase effective January 1, 2015. Union Final Offer (Firefighter Agreement) at 1. However, given the discussion *supra* at VI(A)(1), the Agreement will not have a fourth year and expires December 31, 2014. In anticipation that a four year contract might not be imposed, the Union qualified its wage offer by reserving “... the right to subtract years from or add years to its wage proposal” Union Final Offer (Firefighter Agreement) at 6. Therefore, because a three year duration has been imposed, the Union’s 3.0% offer for the fourth year will not be considered.

TABLE 1

Effective	Village³⁷	Union³⁸
1/1/12	3.5%	2.5%
1/1/13	2.5%	3.5%
1/1/14	2.5%	4.0%
Total	8.5%	10.0%

b. The Salary Schedules From The Parties' Offers

The salary schedules generated by the parties' offers are as follows:³⁹

³⁷ The Village's offer effective January 1, 2012 is 2.5% and "[a]dditionally, all bargaining unit members will receive a 1% equity adjustment effective January 1, 2012." Village Amended Final Offer at 15. Therefore, the Village's offer effective January 1, 2012 is 3.5%.

³⁸ The Union's offer effective January 1, 2013 is 2.5% "... plus a 1.0% equity adjustment". Union Final Offer (Firefighter Agreement) at 1. Therefore, the Union's offer effective January 1, 2013 is 3.5%. Similarly, the Union's offer effective January 1, 2014 is 2.5% "... plus a 1.5% equity adjustment". *Id.* Therefore, the Union's offer effective January 1, 2014 is 4.0%.

³⁹ With only spread sheet rounding differences, the salary schedules I generated through a spread sheet basically match those prepared by the parties. Village Brief at 31-33; Union Final Offer (Firefighter Agreement) at 13 (Appendix A).

However, there does appear to be an error in the Village's salary schedule. For example, there is an error for the 2012 rate for a firefighter after 3 years. Village Brief at 31. The Village computes the rate for that employee in 2012 as \$79,258. *Id.* The Village's wage rate for that employee for 3 years (\$79,258) is higher than the same rank for 5 years (\$78,473), showing there is an error for the 3 year employee (because it should be lower based on lesser years of service). The Village then computes the same rank of employee at 10 years to be paid \$79,258, which is the same for this employee at 3 years. *Id.* Also, the error is demonstrated by the 2013 rate for that employee, which the Village computes as \$79,638. *Id.* \$79,638 is 0.48% above the 2012 rate for that employee, but the Village's offer for 2013 is 2.5%.

The December 31, 2011 rate for that employee was \$75,069. See Firefighter Agreement at Appendix A. A 3.5% increase to \$75,069 is \$77,696 (as reflected in the wage schedule I generated based on the Village's offer (Table 3, *infra*)).

I do not point this out to be clever or to show that I am carefully checking the parties' submissions. I am adopting the Village's wage offer. Therefore, if the Village uses the same schedule to pay the employees and if this kind of error is not caught when putting the Agreement together, there will be an error in payments for wages and all other benefits tied to wages. In final preparation of the salary schedules, the Village's calculations should therefore be re-checked so as to avoid issues down the road.

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TABLE 2
Union Offer - Firefighter Agreement

<u>Rank</u>	<u>Step</u>	<u>12/31/11</u> <u>(End of</u> <u>Last Con-</u> <u>tract)</u>	<u>1/1/12</u> <u>(2.5%)</u>	<u>1/1/13</u> <u>(3.5%)</u>	<u>1/1/14</u> <u>(4%)</u>	<u>Dif.</u>	<u>Actual</u> <u>% Inc.</u>
Firefighter	Start	52,540	53,854	55,738	57,968	5,428	10.33%
	1 yr.	62,968	64,542	66,801	69,473	6,505	10.33%
	2 yrs.	65,983	67,633	70,000	72,800	6,817	10.33%
	3 yrs.	75,069	76,946	79,639	82,824	7,755	10.33%
	5 yrs.	75,819	77,714	80,434	83,652	7,833	10.33%
	10 yrs.	76,578	78,492	81,240	84,489	7,911	10.33%
	15 yrs.	77,343	79,277	82,051	85,333	7,990	10.33%
	20 yrs.	78,117	80,070	82,872	86,187	8,070	10.33%
	25 yrs.	78,898	80,870	83,701	87,049	8,151	10.33%
FF Paramedic	Start	60,159	61,663	63,821	66,374	6,215	10.33%
	1 yr.	68,697	70,414	72,879	75,794	7,097	10.33%
	2 yrs.	73,616	75,456	78,097	81,221	7,605	10.33%
	3 yrs.	82,647	84,713	87,678	91,185	8,538	10.33%
	5 yrs.	83,473	85,560	88,554	92,097	8,624	10.33%
	10 yrs.	84,308	86,416	89,440	93,018	8,710	10.33%
	15 yrs.	85,151	87,280	90,335	93,948	8,797	10.33%
	20 yrs.	86,003	88,153	91,238	94,888	8,885	10.33%
	25 yrs.	86,863	89,035	92,151	95,837	8,974	10.33%
Engineer	3 yrs.	82,647	84,713	87,678	91,185	8,538	10.33%
	5 yrs.	83,473	85,560	88,554	92,097	8,624	10.33%
	10 yrs.	84,308	86,416	89,440	93,018	8,710	10.33%
	15 yrs.	85,151	87,280	90,335	93,948	8,797	10.33%
	20 yrs.	86,003	88,153	91,238	94,888	8,885	10.33%
	25 yrs.	86,863	89,035	92,151	95,837	8,974	10.33%
Lieutenant	3 yrs.	88,348	90,557	93,726	97,475	9,127	10.33%
	5 yrs.	89,231	91,462	94,663	98,449	9,218	10.33%
	10 yrs.	90,123	92,376	95,609	99,434	9,311	10.33%
	15 yrs.	91,025	93,301	96,566	100,429	9,404	10.33%
	20 yrs.	91,935	94,233	97,532	101,433	9,498	10.33%
	25 yrs.	92,854	95,175	98,506	102,447	9,593	10.33%

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TABLE 3
Village Offer - Firefighter Agreement

<u>Rank</u>	<u>Step</u>	<u>12/31/11</u> <u>(End of</u> <u>Last Con-</u> <u>tract)</u>	<u>1/1/12</u> <u>(3.5%)</u>	<u>1/1/13</u> <u>(2.5%)</u>	<u>1/1/14</u> <u>(2.5%)</u>	<u>Dif.</u>	<u>Actual</u> <u>% Inc.</u>
Firefighter	Start	52,540	54,379	55,738	57,132	4,592	8.74%
	1 yr.	62,968	65,172	66,801	68,471	5,503	8.74%
	2 yrs.	65,983	68,292	70,000	71,750	5,767	8.74%
	3 yrs.	75,069	77,696	79,639	81,630	6,561	8.74%
	5 yrs.	75,819	78,473	80,434	82,445	6,626	8.74%
	10 yrs.	76,578	79,258	81,240	83,271	6,693	8.74%
	15 yrs.	77,343	80,050	82,051	84,103	6,760	8.74%
	20 yrs.	78,117	80,851	82,872	84,944	6,827	8.74%
	25 yrs.	78,898	81,659	83,701	85,793	6,895	8.74%
FF Paramedic	Start	60,159	62,265	63,821	65,417	5,258	8.74%
	1 yr.	68,697	71,101	72,879	74,701	6,004	8.74%
	2 yrs.	73,616	76,193	78,097	80,050	6,434	8.74%
	3 yrs.	82,647	85,540	87,678	89,870	7,223	8.74%
	5 yrs.	83,473	86,395	88,554	90,768	7,295	8.74%
	10 yrs.	84,308	87,259	89,440	91,676	7,368	8.74%
	15 yrs.	85,151	88,131	90,335	92,593	7,442	8.74%
	20 yrs.	86,003	89,013	91,238	93,519	7,516	8.74%
	25 yrs.	86,863	89,903	92,151	94,455	7,592	8.74%
Engineer	3 yrs.	82,647	85,540	87,678	89,870	7,223	8.74%
	5 yrs.	83,473	86,395	88,554	90,768	7,295	8.74%
	10 yrs.	84,308	87,259	89,440	91,676	7,368	8.74%
	15 yrs.	85,151	88,131	90,335	92,593	7,442	8.74%
	20 yrs.	86,003	89,013	91,238	93,519	7,516	8.74%
	25 yrs.	86,863	89,903	92,151	94,455	7,592	8.74%
Lieutenant	3 yrs.	88,348	91,440	93,726	96,069	7,721	8.74%
	5 yrs.	89,231	92,354	94,663	97,030	7,799	8.74%
	10 yrs.	90,123	93,277	95,609	97,999	7,876	8.74%
	15 yrs.	91,025	94,211	96,566	98,980	7,955	8.74%
	20 yrs.	91,935	95,153	97,532	99,970	8,035	8.74%
	25 yrs.	92,854	96,104	98,506	100,969	8,115	8.74%

c. Analysis Of The Parties' Salary Offers

(1). The “Real Numbers”

What should jump out first in analyzing these salary offers is that the total percentage wage offers (here, 8.5% by the Village and 10.0% by the Union) are not real numbers. Like savings accounts, wage offers compound over the life of a collective bargaining agreement. After the first wage increase which is built upon the last rate paid under the predecessor contract, the remaining years are built upon percentages applied to a prior year's wage increase and that repeats until the contract expires. Therefore, as shown by the above Tables 1-3, the Village's 8.5% offer is really 8.74% and the Union's 10.0% offer is really 10.33%.⁴⁰

(2). Cost of Living

(a). 2012 and 2013

Cost of living (“COL” or “CPI”) is an applicable factor to be considered.⁴¹

Current data from the Bureau of Labor Statistics (“BLS”) as of May 2014 show that for period January 1, 2012 through December 31, 2014 – *i.e.*, the

⁴⁰ For example, under the Union's offer, an engineer with 17 years would receive an actual percentage wage increase of 10.33% calculated by subtracting the amount earned at the expiration of Firefighter Agreement on December 31, 2011 from the amount earned at end of the three year Firefighter Agreement expiring on December 31, 2014 and dividing the result by the amount earned at the expiration of December 31, 2011 Firefighter Agreement. That is $93,948 - 85,151 = 8,797$. $8,797 / 85,151 = .1033$ (10.33%). That is how, because of compounding, a 10.0% offer is really 10.33%.

⁴¹ Section 14(h)(5) (“The average consumer prices for goods and services, commonly known as the cost of living.”).

first two years of the Firefighter Agreement – the cost of living has actually increased by 1.29% in 2012 and 1.20% in 2013:⁴²

TABLE 4
COL Changes For First Two Years Of The Firefighter Agreement

Contract Year	Begin	End	COL Change
1/12 - 12/12	226.665	229.601	1.29%
1/13 - 12/13	230.280	233.049	1.20%

Comparing the parties' offers for the first two years of the Firefighter Agreement against the actual CPI shows the following:

TABLE 5
First Two Years Offers Compared To Cost Of Living Increase (Actual)

Contract Period	Cost of Living Increase	Village Offer	Dif. From COL	Union Offer	Dif. From COL
1/12 - 12/12	1.29%	3.5%	2.21%	2.5%	1.21%
1/13 - 12/13	1.20%	2.5%	1.30%	3.5%	2.30%
		Total	3.51%	Total	3.51%

Thus, for the first two years of the Firefighter Agreement, both offers *far* exceed the cost of living increase for each contract year and, if those increases are totaled, they are identical.

⁴² By accessing that website for the BLS data bases, the latest CPI comparisons can be made through designation of year ranges for U.S. All items, 1982-84=100 and retrieving the data. That website is:

<http://data.bls.gov/cgi-bin/surveymost?cu>

But given how far in excess of the actual cost of living increases over the first two years of the Firefighter Agreement, both offers are generous in favor of the employees.

(b). 2014

As of this writing as this award issues on July 7, 2014, we have COL (or CPI) data for the first five months of 2014 - i.e., the first five months of the third year of the Firefighter Agreement.

TABLE 6
COL Changes For January - May 2014

Begin (1/14)	End (5/14)	COL Change
233.916	237.900	1.70%

The Federal Reserve Bank of *Philadelphia's Second Quarter 2014 Survey of Professional Forecasters* (May 16, 2014) forecasts the cost of living increase for 2014 to be 1.9%.⁴³ Given that the increase for 2014 has already reached

⁴³ www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters/2014/survq214.cfm

The Federal Reserve Bank of Philadelphia's *Survey of Professional Forecasters* tracks two cost of living projections – "Headline CPI" and "Core CPI". *Id.* "Headline" inflation data include more volatile indicators such as food and energy prices, while "Core" inflation data do not. See *Monetary Trends* (September 2007), "Measure for Measure: Headline Versus Core Inflation" ("... the 'core' measure – which excludes food and energy prices ... [while] the corresponding headline measure, which does not."): <http://research.stlouisfed.org/publications/mt/20070901/cover.pdf>

For purposes of setting wage rates, I have found that "Headline" cost of living data to be a more reliable indicator than "Core" data. See my award in *Cook County Sheriff & County of Cook and AFSCME Council 31*, L-MA-09-003, 004, 005 and 006 (2010) at 25:

With respect to the CPI, the [Federal Reserve Bank of Philadelphia's] Survey distinguishes between "Headline CPI" and "Core CPI" — the difference being that "Headline CPI" includes forecasts concerning prices in more volatile areas such as energy and food, while "Core CPI" does not. Because employees have to pay for energy and food, it appears that Headline CPI is more relevant for this discussion.

The *Cook County Sheriff* award can be found at:

[footnote continued]

1.7% after only five months, that prediction may not appear to be in sync with the real movement in the COL.⁴⁴ However, that discrepancy aside, even if the cost of living continued at the present pace until the end of the year, that would bring the final index number for December 2014 to 243.478 (or 4.09% – a perhaps unlikely result unless the Federal Reserve takes steps to no longer keep inflation down).⁴⁵

However, giving the Union the benefit of the doubt and assuming that the COL continues to increase at the rate exhibited by the first five months of 2014 to drive the COL index number to 243.478 for December 2014, that would cause the total wage offers compared to the COL to look as follows:

[continuation of footnote]

www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Cook%20Co%20Sheriff%20&%20AFSCME,%20L-MA-09-003.pdf

I recognize that “[e]conomic forecasts are always uncertain” Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2013 to 2023* (February 2013) at 43.

www.cbo.gov/sites/default/files/cbofiles/attachments/43907-BudgetOutlook.pdf

However, while perhaps uncertain, economic forecasts are one of the best tools interest arbitrators have to work with for looking into the future for cost of living purposes when setting wage rates for out-years in collective bargaining agreements.

⁴⁴ With its release of the May 2014 data, the BLS described the May 2014 increase in the CPI with the comments “[o]ver the last 12 months, the all items index increased 2.1 percent before seasonal adjustment ... [t]he all items index increased 2.1 percent over the last 12 months; this compares to a 2.0 percent increase for the 12 months ending April, and is the largest 12-month increase since October 2012.” www.bls.gov/news.release/archives/cpi_06172014.pdf

⁴⁵ This is a proportion. $237.900 \text{ (May 2014)} - 233.916 \text{ (January 2014)} = 3.984$. $3.984 \times 12 = 47.808$. $47.808 / 5 = 9.562$. Therefore if extended out to December 2014, the index number would rise to 243.478 ($233.916 \text{ (January 2014)} + 9.562 \text{ (projected increase based on May 2014 numbers)}$). Thus, if the COL continues to rise at the rate exhibited by the first five months of 2014, that equates to a 4.09% COL increase for 2014 ($9.562 / 233.916 = .04088 \text{ (4.09\%)}$).

TABLE 7

**Cost Of Living Increase (With Projection Through December 2014 If
2014 Continues At Present Rate)**

Contract	Begin	End	COL Change
1/12 - 12/14	226.665	243.478	7.41%

Comparing the parties offers over the total length of the Firefighter Agreement, yields the following:

TABLE 8

**Offers Compared To Cost Of Living Increase (First Two Years Actual And
Projected 2014)**

Contract Pe- riod	Cost of Living Increase	Village Offer	Dif. From COL	Union Offer	Dif. From COL
1/12 - 12/14	7.41%	8.5%	1.09%	10.0%	2.59%

And if the real percentage increases are used based upon the compound-
ing of wage increases numbers are used (see Tables 2 and 3, *supra*), the result
is:

TABLE 9

**Offers Compared To Cost Of Living Increase (First Two Years Actual And
Projected 2014 – Compounded Percentage Increases)**

Contract Per- iod	Cost of Living Increase	Village Offer	Dif. From COL	Union Offer	Dif. From COL
1/12 - 12/14	7.41%	8.74%	1.33%	10.33%	2.92%

Thus, giving the Union the complete benefit of the doubt that inflation will pick up to such an extent that the projections for 2014 will more than double to 4.09% from the projected 1.9%, over the life of the Firefighter Agreement the Village's offer still far exceeds the cost of living increase by 1.09% increase in the CPI (if the simple percentage increase of 8.5% is considered) and 1.33% (if the actual compounded increase of 8.74% is considered). On the other hand, if the Union's 10% offer is considered, that offer outpaces the cost of living by 2.59% and if the real compounded increase of 10.33% is considered, the Union's offer exceeds the cost of living by 2.92%.

(c). The "Inflation Calculator"

The BLS maintains the "CPI Inflation Calculator" which converts wages earned in past years to buying power in present dollars based on inflation. The "CPI Inflation Calculator" can be found at:

www.bls.gov/data/inflation_calculator.htm

By taking the wages earned at the end of the prior Firefighter Agreement and placing that number into the CPI Inflation Calculator, the conversion then allows a comparison of how the wage offers actually compare to the CPI as of the date of calculation.⁴⁶

As an example (and because the same percentage increases will be reflected in each rank and step), using a firefighter paramedic with 10 years of service who therefore earned \$84,308 as of December 31, 2011 prior to the

⁴⁶ The CPI Inflation Calculator (*id.* at "About this calculator"): ... uses the average Consumer Price Index for a given calendar year. This data represents changes in prices of all goods and services purchased for consumption by urban households. This index value has been calculated every year since 1913. For the current year, the latest monthly index value is used.

commencement of this Firefighter Agreement and assuming no step movements are made during the life of the Firefighter Agreement, as of this writing, the CPI Inflation Calculator shows for that rank and step:

CPI Inflation Calculator	
\$84,308.00	in 2011
Has the same buying power as:	
\$89,165.83	in 2014

As of this writing, that is an *actual* dollar increase of \$4,857.83 due to inflation, or 5.76%.⁴⁷

Using the salary schedules generated by the parties' offers (Tables 2, 3 *supra*), the actual increases can be compared for this employee as follows:

⁴⁷ $89,165.83 - 84,308 = 4,857.83$. $4,857.83 / 84,308 = 0.05762$ (5.76%).

TABLE 10

**Village Offer Compared To CPI Inflation Calculator End Of Last
Firefighter Agreement To Present (FF Paramedic At 10 Years)**

Salary As Of 12/31/11 (End of Last Agreement)	Salary as of 12/31/14 per Village Offer of 8.5%	Salary Inc. Over Life of Agree- ment per Vil- lage Of- fer	Actual Percent Inc. per Village Offer	Salary Inc. per CPI Infl. Calc.	Actual Cost of Living Increase per CPI Infl. Calc.	Dif. Vil- lage Of- fer to Actual Cost of Living Inc. Per CPI Infl. Calc. (\$)	Dif. Vil- lage Offer To Actual Cost of Living Inc. per CPI Infl. Calc. (%)
84,308	91,676	7,368 ⁴⁸	8.74% ⁴⁹	4,858 ⁵⁰	5.76% ⁵¹	2,510 ⁵²	2.98% ⁵³

⁴⁸ 91,676 - 84,308 = 7,368.

⁴⁹ 7,368/84,308 = 0.08739 (8.74%).

⁵⁰ 89,165.83 - 84,308 = 4,857.83.

⁵¹ 4,858.83/84,308 = 0.05762 (5.76%).

⁵² 7,368 - 4,857.83 = 2,510.17.

⁵³ 8.74% - 5.76% = 2.98%.

TABLE 11

**Union Offer Compared To CPI Inflation Calculator End Of Last
Firefighter Agreement To Present (FF Paramedic At 10 Years)**

Salary As Of 12/31/11 (End of Last Agreement)	Salary as of 12/31/14 per Union Offer of 10.0%	Salary Inc. Over Life of Agree- ment per Un- ion Offer	Actual Percent Inc. per Union Offer	Salary Inc. per CPI Infl. Calc.	Actual Cost of Living Increase per CPI Infl. Calc.	Dif. Un- ion Of- fer to Actual Cost of Living Inc. Per CPI Calc. (\$)	Dif. Un- ion Offer To Actual Cost of Living Inc. per CPI Calc. (%)
84,308	93,018	8,710 ⁵⁴	10.33% ⁵⁵	4,858 ⁵⁶	5.76% ⁵⁷	3,852 ⁵⁸	4.57% ⁵⁹

Therefore, based on the actual numbers generated by the CPI Inflation Calculator, the Village's offer of 8.5% (8.74% compounded) is closer to the cost of living and still substantially exceeds the cost of living and the Union's offer of 10% (10.33% compounded) far outpaces the actual increase thus far in the cost of living.

Perhaps the key numbers here for this employee are that based on the present inflation as shown by the Inflation Calculator, the Village's offer is \$2,510 greater than the cost of living and places the employee's salary at the end of the last Firefighter Agreement 2.98% ahead of the cost of living. Further, as the salaries get higher due to higher rank or step placement, while the

⁵⁴ 93,018 - 84,308 = 8,710.

⁵⁵ 8,710/84,308 = 0.10331 (10.33%).

⁵⁶ 89,165.83 - 84,308 = 4,857.83.

⁵⁷ 4,858.83/84,308 = 0.5762 (5.76%).

⁵⁸ 8,710 - 4,857.83 = 3,852.17.

⁵⁹ 10.33% - 5.76% = 2.98%.

percentages will stay the same, dollar differences will increase.⁶⁰ That is a good economic offer from an employee's standpoint.

(d). Conclusion On The Cost Of Living

Based on the above, no matter how these offers are looked at (actual yearly comparisons (Tables 4, 5), actual comparisons with forecasted projections (Tables 6-9) and actual to-date calculations (the CPI Inflation Calculator and Tables 10, 11), the Union's offer of 10% (10.33% compounded) is just out of line with the cost of living. The Village's offer of 8.5% (8.74% compounded) is closer to the cost of living and still substantially exceeds the cost of living increases.

The cost of living factor therefore favors the Village's wage offer.

(3). Overall Compensation

Another applicable factor is the overall compensation presently received by the employees, including direct wage compensation.⁶¹

For present purposes, the focus must turn to the impact of step increases in the salary schedule. This is *actual* money from increases received by the bargaining unit.

⁶⁰ For example, and looking at the salary schedule generated by the Village's offer (Table 3, *supra*), if the Inflation Calculator is used for a lieutenant at 25 years who made \$92,854 at the end of the last Agreement, the buying power of that salary in today's dollars will be \$98,204.25 – which is an increase of \$5,350.25 but still (like the firefighter paramedic at 10 years) is 5.76% in terms of percentage increase for the actual cost of living. As shown in Table 3, *supra*, The Village's compounded 8.74% increase is there for that employee as well.

⁶¹ Section 14(h)(6).

There are nine steps on the salary schedule based on length of service for firefighters and firefighter paramedics and six steps also based on length of service for engineers and lieutenants.⁶²

The Village provided an exhibit (“Personnel Statistics”) showing the census of the bargaining units as of June 1, 2013 in the classifications covered by the Firefighter Agreement.⁶³ That exhibit also shows the various bargaining unit members’ “hire date”. With that information, it is possible to show step movements (which are based on length of service) and from that to see how the wage offers actually impact the various members of the bargaining unit as an element of overall compensation. This is another example of *real* money and not just some percentage that is not a real number (*see* discussion *supra* at VI(A)(2)(c)(1)).

But first, an example of how this works with hypothetical employees.

This is a three year contract starting January 1, 2012. At the lower end of the step schedule and because the step increases are on a yearly basis at that level (from start to three years), newer employees who started in 2011 can make up to three step movements during the life of the three year Firefighter Agreement.⁶⁴ Thereafter, following the one and 2 year steps, because the step increases are on a five year basis, more senior employees (after five years) can make one step movement and some employees will make no step movements

⁶² Agreement at Appendix A.

⁶³ Village Exhibit 38. The Union’s seniority list (Union Exh. 1 at Tab 4) is dated January 2013. The Village’s list is more current and shall be used for the examples discussed.

⁶⁴ For example, a firefighter who hypothetically started on April 26, 2011 and under the predecessor Firefighter Agreement will move to the 1 year step on April 26, 2012; the 2 year step on April 26, 2013; and the 3 year step on April 26, 2014 – *i.e.*, three step movements during the life of the Firefighter Agreement which expires on December 31, 2014.

because they have not been in their five year step level for the full five years during the life of the Firefighter Agreement, or they have topped out after 25 years. Without plugging in the specifics for the bargaining unit and given that there are varying starting dates for the employees, considering the step schedule, the general impact of the parties' offers on the firefighter/paramedic classification are as follows:

TABLE 12
Village Offer With Step Movements (Firefighter/Paramedic)

Step And Step Movements	No. of Step Move- ments	12/31/11 (End of Prior Agreement)	12/31/14 (End of 2011-2014 Agreement)	Total Increase	Actual Percentage Wage Increase
Start to 3 yrs.	3	60,159	89,870	29,711	49.39%
1 yr. to 3 yrs.	2	68,697	89,870	21,173	30.82%
2 yrs. to 5 yrs.	2	73,616	90,768	17,152	23.30%
3 yrs. to 5 yrs.	1	82,647	90,768	8,121	9.83%
5 yrs. to 5 yrs.	0	83,473	90,768	7,295	8.74%
5 yrs. to 10 yrs.	1	83,473	91,676	8,203	9.83%
10 yrs. to 10 yrs.	0	84,308	91,676	7,368	8.74%
10 yrs. to 15 yrs.	1	84,308	92,593	8,285	9.83%
15 yrs. to 15 yrs.	0	85,151	92,593	7,442	8.74%
15 yrs. to 20 yrs.	1	85,151	93,519	8,368	9.83%
20 yrs. to 20 yrs.	0	86,003	93,519	7,516	8.74%
20 yrs. to 25 yrs.	1	86,003	94,455	8,452	9.83%
25 yrs.+	0	86,863	94,455	7,592	8.74%

TABLE 13
Union Offer With Step Movements (Firefighter/Paramedic)

Step And Step Movements	No. of Step Move- ments	12/31/11 (End of Prior Agreement)	12/31/14 (End of 2011-2014 Agreement)	Total Increase	Actual Percentage Wage Increase
Start to 3 yrs.	3	60,159	91,185	31,026	51.57%
1 yr. to 3 yrs.	2	68,697	91,185	22,488	32.74%
2 yrs. to 5 yrs.	2	73,616	92,097	18,481	25.10%
3 yrs. to 5 yrs.	1	82,647	92,097	9,450	11.43%
5 yrs. to 5 yrs.	0	83,473	92,097	8,624	10.33%
5 yrs. to 10 yrs.	1	83,473	93,018	9,545	11.43%
10 yrs. to 10 yrs.	0	84,308	93,018	8,710	10.33%
10 yrs. to 15 yrs.	1	84,308	93,948	9,640	11.43%
15 yrs. to 15 yrs.	0	85,151	93,948	8,797	10.33%
15 yrs. to 20 yrs.	1	85,151	94,888	9,737	11.43%
20 yrs. to 20 yrs.	0	86,003	94,888	8,885	10.33%
20 yrs. to 25 yrs.	1	86,003	95,837	9,834	11.43%
25 yrs.+	0	86,863	95,837	8,974	10.33%

Therefore, as an example using the Firefighter Paramedic rank, the Village's offer can potentially result in percentage increases of 8.74% to 49.39%. The Union's offer takes the percentage increases from 10.33% to 51.57%.

But this is just an example using hypothetical employees. Here, I have hard data showing the *actual* impact on the bargaining unit.

I return to the Village's "Personnel Statistics" showing the census of the bargaining units as of June 1, 2013 in the classifications covered by the Firefighter Agreement.⁶⁵ That exhibit shows the hire date in the various classifications for the members of the bargaining unit. For purposes of example and as-

⁶⁵ Village Exh. 38.

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suming that no new employees were hired after June 1, 2013 and there were no promotions to different ranks, the *actual* impact of the wage offers on the Firefighter bargaining unit is as follows as shown by the Village's census where employees move to higher steps during the period of the Firefighter Agreement from January 1, 2012 through December 31, 2014:⁶⁶

TABLE 14
Village Offer With Step Movements – Actual Impact

Rank Step And Step Movements	No. of Employ- ees In Classifi- cation	No. of Employ- Ees Mak- ing Step Move- ments	No. of Step Move- ments	12/31/11 (End of Prior Agree- ment)	12/31/14 (End of 2011- 2014 Agree- ment)	Total In- crease	Actual Percent- age Wage Increase
Firefighter	11						
3 yrs. to 5 yrs.		1 ⁶⁷	1	75,069	82,445	7,376	9.83%
5 yrs. to 10 yrs.		3 ⁶⁸	1	75,819	83,271	7,452	9.83%
10 yrs. to 15 yrs.		4 ⁶⁹	1	76,578	84,103	7,525	9.83%
15 yrs. to 20 yrs.		1 ⁷⁰	1	77,343	84,944	7,601	9.83%
20 yrs. to 25 yrs.		1 ⁷¹	1	78,117	85,793	7,676	9.83%
Total Moving		10					
FF/Paramedic	25						
10 yrs. to 15 yrs.		4 ⁷²	1	84,308	92,593	8,285	9.83%
15 yrs. to 20 yrs.		4 ⁷³	1	85,151	93,519	8,368	9.83%
Total Moving		8					

⁶⁶ Those not making step movements are not doing so because they become eligible for the next step movement after the expiration of the Agreement on December 31, 2014. See Village Exh. 38.

⁶⁷ Hire date: 4/16/07.

⁶⁸ Hire dates: 6/10/02, 3/16/03, 3/16/04.

⁶⁹ Hire dates: 5/16/97 (2 employees), 2/1/98 (2 employees).

⁷⁰ Hire date: 4/1/92.

⁷¹ Hire date: 2/1/89.

⁷² Hire dates: 5/16/97, 2/1/98, 2/15/99, 12/1/99.

⁷³ Hire dates: 4/1/92, 7/6/92, 4/1/93, 9/7/94.

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Engineer	18						
10 yrs. to 15 yrs.		6 ⁷⁴	1	84,308	92,593	8,285	9.83%
15 yrs. to 20 yrs.		5 ⁷⁵	1	85,151	93,519	8,368	9.83%
20 yrs. to 25 yrs.		1 ⁷⁶	1	86,003	94,455	8,452	9.83%
Total Moving		12					
Lieutenant	12						
15 yrs. to 20 yrs.		3 ⁷⁷	1	91,025	99,970	8,945	9.83%
20 yrs. to 25 yrs.		1 ⁷⁸	1	91,935	100,969	9,034	9.83%
Total Moving		4					

Therefore, based on the above and considering the real changes and actual impact on the Firefighter bargaining unit, under the Village's offer of 8.5% over the life of the three year term, the following is evident from the Village's offer and favors the Village's offer:

- As the salary schedule lays out with built in step movements, the potential actual increases over the life of the Agreement provides for increases ranging from 8.74% to 49.39%.
- Of the 66 employees in the unit as of June 1, 2013, 34 (i.e., 51.5% of the bargaining unit) will make step movements amounting to an *actual* increase of 9.83% in their wages and the remainder who make no step movements will receive the compounded actual increase of 8.74%.

There is more. As discussed *infra* at VI(A)(4), the Village seeks to change the manning provisions of the Firefighter Agreement, which, if allowed, would amount to decreased overtime opportunities for the bargaining unit. I have not adopted that change, the result being that employees will continue to have

⁷⁴ Hire dates: 5/16/97 (4 employees), 2/1/98, 5/24/99.

⁷⁵ Hire dates: 4/1/92, 9/14/92, 4/1/93, 5/14/93, 8/16/93.

⁷⁶ Hire date: 9/1/87.

⁷⁷ Hire dates: 4/10/92, 1/4/93, 9/7/94.

⁷⁸ Hire date: 9/1/87.

those overtime opportunities at the increased actual rates. And the overtime paid to the employees appears to be quite substantial. According to the Village “[e]ach member of the bargaining unit receives an average of \$30,000 in over-time annually.”⁷⁹ This result also goes to the overall compensation factor, thus favoring the Village's offer.

(4). Internal Comparability

Aside from the Firefighter and Officer bargaining units, there are other represented bargaining units of employees employed by the Village. The Metropolitan Alliance of Police (“MAP”) represents telecommunicators.⁸⁰ The International Association of Operating Engineers, Local 150 represents three groups of employees – the Village's clerical workers; employees in the Public Works Department and crew chiefs in Public Works.⁸¹ Further, MAP represents police patrol officers and the Fraternal Order of Police (“FOP”) represents police sergeants and lieutenants.⁸²

With respect to internal comparability, aside from the two Agreements involved in this case and because they are public safety contracts, the two relevant contracts for comparison purposes are the MAP and FOP police contracts.

The MAP and FOP contracts are for the period January 1, 2011 through December 31, 2014.⁸³ Coupled with the parties' offers in this case, those contracts show the following:⁸⁴

⁷⁹ Village Brief at 31, notes 19 and 20.

⁸⁰ Village Exh. 26.

⁸¹ Village Exh. 30; Tr. 85-86.

⁸² Village Exhs. 24, 25.

⁸³ Village Exh. 24 at Article XXV; Village Exh. 25 at Article XVI.

⁸⁴ Village Exh. 24 at p. 36 (Appendix A); Village Exh. 25 at p. 29 (Appendix A).

TABLE 15
MAP And FOP Police Contracts Compared To The Offers

Effective	MAP	FOP	Village	Union
7/1/11	1.0%	1.0%	--	--
1/1/12	2.5%	2.5%	3.5%	2.5%
1/1/13	2.5%	2.5%	2.5%	3.5%
1/1/14	2.5%	2.5%	2.5%	4.0%
Total	8.5%	8.5%	8.5%	10.0%

For the relevant periods for this dispute (January 1, 2012 - December 31, 2014), the Village's offer (8.5%) exceeds the wage increases in the MAP and FOP contracts for the same period (7.5%) and, obviously, the Union's 10.0% offer exceeds the MAP and FOP contract increases for that period.

However, the Union's position seeking a 10.0% wage increase is fully understandable.

On September 14, 2009, the Union and the Village signed a "Variance Agreement".⁸⁵ The Variance Agreement acknowledged that "... the Village has notified Local 3405 that eleven (11) of its bargaining unit employees covered by the Firefighter Agreement are to be laid off effective August 31, 2009."⁸⁶ The Variance Agreement was entered into "... on a one time non-precedential basis ..." where the Union "... recognized the current state of the economy and wishes to assist the Village in reducing its budget costs"⁸⁷

In the Variance Agreement, the Union agreed to concessions from the then-existing 2007-2010 Agreements (both Firefighter and Officer Agreements)

⁸⁵ Union Exh. 1 at Tab 5.

⁸⁶ *Id.* at p. 1.

⁸⁷ *Id.*

which included: (1) a reduction of pay by nine straight time hours per pay period from September 1, 2009 through December 31, 2009; (2) straight time rather than overtime for work on remaining designated holidays in 2009 and through December 31, 2010; (3) foregoing remaining uniform allowance payments through December 31, 2010; (4) foregoing the 3.75% wage increase that was to be effective January 1, 2010; and (5) the first 36 hours of overtime in 2010 worked would be paid at straight time.⁸⁸

In exchange for those concessions, the Variance Agreement provided that “[t]he Village shall not layoff any bargaining unit employee through and including December 31, 2010.”⁸⁹

The Variance Agreement further provided that upon expiration of the period covered (until December 31, 2010), the wage increases set forth in the Firefighter Agreement would return in full force and effect “... as if there were no variance for fiscal year 2010”.⁹⁰

Thus, to prevent substantial layoffs (11 announced), in the Variance Agreement the Union granted significant concessions to the 2007-2010 Firefighter Agreement.

According to the Union, no other bargaining units granted concessions to the Village and:⁹¹

All other bargaining units in the Village received a 1% increase on July 1, 2011 except for the Fire Units.

* * *

⁸⁸ *Id.*

⁸⁹ *Id.* at par. 2.

⁹⁰ *Id.* at par. 4(a).

⁹¹ Union Brief at 28-31 [record citations and footnotes omitted].

The Union agreed to significant concessions in both 2009 and 2010, to the tune of close to \$900,000. The only other bargaining unit that made any concessions was the Public Works Unit, and the amount of those concessions paled by comparison to what the Fire Units gave up. Notably, the Village sought even greater concessions from the Police Units than it did from the Fire Units, and concessions from the Public Safety Unit, yet the Village failed to receive a penny from either. In fact, the Village sought to receive the bulk of the concessions from the Police Units. Those bargaining units suffered no consequences as a result of their refusal to provide the Village with its claimed need for assistance. In fact, the Village hired additional police officers from 2009 to 2013, gave the Police Units the same wage increases as the Public Safety and Public Works Units for 2012, 2013 and 2014, and granted the Police Unit a “me too” clause.

In addition to the concessions negotiated in the Variance Agreement, in 2011, the Union did not receive a wage increase because the contract rolled over for one year. All other Village bargaining units received a 1% wage increase retroactive to July 1, 2011, except for the Fire Units.

* * *

... The Union gave the Village significant concessions shortly after the economy collapsed. No other bargaining unit gave the Village concessions, except for the Public Works Unit, yet these bargaining units continued to receive the same wage increases. Thus, although the Fire Units did not receive their 3.75% wage increase in 2010, the Police Officers, Police Supervisors and Public Safety Units did. In 2011, these same units received a 1% increase effective July 1, 2011, whereas the Fire Units received no increase at all.

The simple fact is that the Fire Units gave when the Village claimed it was in need. No other bargaining unit made the sacrifice; all but one other unit made no sacrifice at all. The concessions and lack of 2011 wage increase pushed the Fire Units well behind the internal comparables. The Union's wage proposal serves to allow the Fire Units to catch up with the internal comparables. ...

Given that the Union gave concessions and other bargaining units did not and those units received increases, does the Union have cause to be angry?

Of course – no other bargaining units gave like the Union gave. Does this explain the Union's offer? It does. In its eyes, the Union is trying to catch up.

On the other hand, what the Union got when it signed the Variance Agreement was a *guarantee* that 11 of its members would not be laid off for 15 months after the Village had given notice that they would be laid off. With that guarantee, there was no gamble that the bargaining unit would be impacted by the announced significant layoffs. That is what the Union "bought" with the Variance Agreement – guaranteed job security for those it represented the through the end of 2010.

The fact that all other bargaining units did not give the same concessions – or, according to the union, in some cases any concessions – meant that those bargaining units did not have the same guaranteed job security that the bargaining units in this case had. But in the end, that is what the Union bought in the Variance Agreement for those it represents – *guaranteed* job security for 15 months.

Those concessions in exchange for *guaranteed* job security for the bargaining unit do not, however, amount to a requirement that in this proceeding the amounts the employees paid in concessions or other additional amounts must be added to the provisions of the new Firefighter Agreement.

After the Variance Agreement expired, the wage rates (and other benefits) were restored to the levels they would have been had there been no concessions. This is not a case of the Union having to catch up with the other bargaining units. That would have happened if the parties agreed to modify and reduce the wages and benefits given as concessions and maintain those concessions going forward at the modified levels. That did not happen. Paragraph

4(a) of the Variance Agreement restored the wages after the concession period expired “... as if there were no variance for fiscal year 2010”.

Therefore, this is not a “catch up” case, but is a case where the Union is seeking to be paid back for the concessions it gave because all other bargaining units did not do so. But to do that through this proceeding would negate the benefit the bargaining unit received from the Variance Agreement – the guaranteed no layoff promise. The concessions in the Variance Agreement were not made contingent upon similar (or any) concessions being given by all other bargaining units.

The Union bought job security for the bargaining unit at the time when the Great Recession was still raining havoc on the economy. Indeed, according to the BLS, the 3.75% wage increase waived by the Union for the period January 1 through December 31, 2010 to get the job security for a substantial part of its bargaining unit covered a period when the cost of living increased only by 1.1%.⁹² At the time when the economy was reeling and layoffs were common and just adding to the economic horror stories being lived by so many millions of employees, the Variance Agreement was a very wise choice made by the Union – waiving a wage increase which far exceeded the cost of living in addition to other benefits in exchange for a lock on job security for all those it represented.

But again, to increase the wages of the employees in this case solely because all other bargaining units may not have given the same concessions (and, in return received the same job security), would negate the benefit the

⁹² For 2010, the relevant BLS numbers are $219.179 - 216.687 = 2.492$. $2.492/219.179 = .01136$ (1.1%).

<http://data.bls.gov/cgi-bin/surveymost?cu>

employees received – the no layoff guarantee. The Union's argument concerning the Variance Agreement therefore does not change the result.

In this case, the relevant period for the appropriate bargaining units has to be the period involved in this dispute – January 1, 2012 to December 31, 2014. In that period, the MAP and FOP police units received 7.5% increases. But the Village offered 8.5% here for the same period. The Village's offer of 8.5% (which exceeded the wage increase in the internally comparable units by 1.0%) is closer to the wage increases in the other relevant units than is the Union's 10.0% offer. Internal comparability therefore favors the Village's wage offer.⁹³

(5). Conclusion On The Wage Offers

This discussion now circles back to the cost of living which is the best reflection of the economy at this time recognized by the IPLRA with its specific reference to the cost of living in Section 14(h)(5) as an applicable factor. The best indicator as of this writing is the CPI Inflation Calculator which shows as this award issues on July 7, 2014 that the Union's offer of 10% (10.33% compounded) is out of line with the cost of living while the Village's offer of 8.5% (8.74% compounded) is closer to the cost of living and yet still substantially exceeds the cost of living. And further considering that I have given the Union the benefit of the doubt about the increase in the cost of living going to 4.09% for 2014 if the first five months of 2014 are projected to the end of the year (as

⁹³ By finding in this case that internal comparability favors the Village's wage offer, I am not finding that there has been established any parity mandating that wages granted in other units must be granted in the Fire units. Any parity or exactness the Village might seek was broken by the very wage offer made by the Village. Effective January 1, 2012 the MAP and FOP police units received a 2.5% wage increase. The Village offered the Firefighter and Officer bargaining units 3.5%.

opposed to the 1.9% for 2014 projected by the economic forecasters such as the Federal Reserve Bank of *Philadelphia's Second Quarter 2014 Survey of Professional Forecasters*, *supra*), which would bring the cost of living increase over the life of the Firefighter Agreement to 7.41%, the actual impact of the Village's offer which results in potential increases of 8.74% to 49.39% along with the demonstrated actual impact of increases of 8.74% to 9.83% resulting from application of the step movements is far ahead of any cost of living increase (actual or forecasted) during term of this Firefighter Agreement.

Finally taking into account the overall compensation factor and internal comparability, the Village's wage offer must be selected. In this economy and in this municipality, the Union's proposed wage increases are just too high.

The Village's salary offer is adopted.

3. Retroactivity

Section 5.1(b) of predecessor Firefighter Agreement provides:

ARTICLE V

WAGES AND BENEFITS

* * *

Section 5.1 Salaries and Retroactivity

* * *

b. Retroactivity. Employees on the payroll at any time on and after January 1, 2007, shall receive full retroactive pay from January 1, 2007 or from the first day of service after January 1, 2007 for employees hired after January 1, 2007. Retroactivity shall apply to all aspects of pay. Retroactive pay shall be paid in a separate payroll check within a reasonable time not to exceed 45 days after execution of this Agreement by both parties.

The Village seeks to change Section 5.1(b) to read as follows:⁹⁴

b. Retroactivity - Employees on the payroll any time after January 1, 2011 shall receive full retroactive pay from ~~January 1, 2012~~ January 1, 2012 or from the first day of service in 2012 for employees hired after January 1, 2012. ~~Retroactivity shall apply to all aspects of pay. Upon ratification of this Agreement by both parties, retroactive pay shall be paid included in a separate check within a reasonable time not to exceed 45 days after execution of this Agreement by both parties~~ to be issued by the Village as soon as practicable.

The Union seeks to only change the effective dates for retroactivity – i.e., to January 1, 2012.⁹⁵

The Union's proposal must be adopted.

The burden here is on the Village to demonstrate that the existing contract language is broken and “good ideas” are not enough to meet that burden. See discussion *supra* at IV(A); *Highland Park Sergeants Unit, supra* at 5. The Village cannot meet that burden.

First, this is an interest arbitration. Therefore, as the Union correctly points out, “[u]nder Section 14 of the Act, the Union clearly has no right to ratify the Agreement”⁹⁶ Technically, whether intended or not, that is what the Village proposes by adding the phrase “[u]pon ratification of this Agreement by both parties” If this were a normal negotiation with no interest arbitration proceeding, such a proposal might make some sense. But where there is no ability of one party (here, the Union) to ratify the terms of the interest arbitration, the Village's proposed language requiring ratification cannot be added.

⁹⁴ Village Brief at 8. See also, Village Amended Final Offer at 1.

⁹⁵ Union Final Offer (Firefighter Agreement) at 2; Union Brief at 24.

⁹⁶ Union Brief at 48.

Second, as evidenced by the existing language in Section 5.1(b) the *status quo* for retroactivity is that “[r]etroactivity shall apply to all aspects of pay ...”, which the Village seeks to strike, arguing that it is “... is looking to clean up the language because it was unclear what the retroactivity language currently in the CBA means.”⁹⁷ The Village also points to the Officer Agreement at Section 5.1 asserting that “[t]he Village proposed language is identical to the language in the Officer CBA and is working very well.”⁹⁸

The short answer to this issue is that nothing has been shown by the Village to demonstrate that the existing language is “broken” to justify the change it seeks. At best, this aspect of the Village’s position falls into the “good idea” category which is not sufficient to justify a change in an interest arbitration. If the parties cannot agree to “clean up the language” – if that is what this is – then any disputes over this aspect of the retroactivity payment will have to be resolved through the grievance process.

Third, the Village asserts that it “... proposed the ‘as soon as practicable language’ because it made more sense to the Village because there are times that the Village Board of Trustees, who must approve the retroactive pay, only meets once a month, so the Village believed that this was a more reasonable time-frame.”⁹⁹ Again, at best, that is a “good idea”, but is not one that justifies any change through this process.

The fact that this is also the language found in the Officer Agreement at Section 5.1 does not change the result. Putting aside that as discussed *infra* at

⁹⁷ Village Brief at 100-101. See also, Tr. at 186:
MS. SOBOTA: ... The village was looking to clean up the language”

⁹⁸ Village Brief at 101.

⁹⁹ *Id.*

VI(B)(2), that language is changing to comply with the Firefighter Agreement, again, “good ideas” just do not justify changes in this conservative process. Those kinds of changes must be negotiated. If the parties cannot work this out, then any disputes (which at this point are hypothetical) will have to be resolved through the grievance process.

The Union’s offer only seeks to change the language to reflect the effective date of the Firefighter Agreement. That *status quo* is to match the retroactivity date to the commencement of the Firefighter Agreement. The Village has the burden and has not shown why that *status quo* is broken and has to be changed.

The Union’s offer on retroactivity is therefore adopted.

4. Minimum Manning

Section 7.9 of the Firefighter Agreement provides, in pertinent part:

ARTICLE VII

MISCELLANEOUS

* * *

Section 7.9. Minimum Manning.

The parties’ 2003-2006 collective bargaining agreement includes the following minimum manning clause:

a. The parties recognize that for purposes of efficient response to emergency situations and for reasons of employee safety, sufficient personnel and apparatus need to be maintained in a state of readiness at all times. If the number of on duty personnel falls below the daily minimums, employees shall be hired back pursuant to Section 6.4. “Overtime Distribution.”

b. The Village shall exercise its best efforts to maintain the following apparatus minimum manning requirements:

On each engine: four (4) employees

On each ALS ambulance: two (2) paramedics (EMTP)

On each BLS ambulance: two (2) employees
(EMTA or EMTP)

On each squad: three (3) employees

c. The Village shall exercise its best efforts to maintain at a minimum the following employees in the described ranks:

twelve (12) Lieutenants
eighteen (18) Engineers
twenty-four (24) Firefighter/Paramedics

* * *

The Village seeks the following changes:¹⁰⁰

Section 7.9. Minimum Manning.

The daily shift staffing should consist of 21 employees. However, if staffing falls below 21 personnel, the employer may modify the staffing on each apparatus as follows:

On each engine (or quint): four (4) employees, unless daily staffing falls below 21 employees for any reason, then the staffing on each engine (or quint) may be reduced to three (3) employees on any or all of the engines (or quint) (the staffing on any engine (or quint) shall not be less than three (3) employees on any day; should staffing be insufficient to staff each engine (or quint) with a minimum of three (3) employees, employees will be hired back pursuant to Section 6.4 "Overtime Distribution"). The Fire Chief shall have the sole discretion to determine whether staffing on any engine (or quint) should be reduced to three (3) employees any time the daily staffing falls below 21 employees.

On each ALS ambulance: two (2) paramedics
(EMTP)

On each BLS ambulance: two (2) employees
(EMTA or EMTP)

On each squad: ~~three (3)~~ two (2) employees

The Village shall exercise its best efforts to maintain at a minimum the following employees in the described ranks:

Twelve (12) Lieutenants
Eighteen (18) Engineers
Twenty-four (24) Firefighter/Paramedics

¹⁰⁰ Village Amended Final Offer at 4; Village Brief at 11-22.

The Union seeks to maintain the *status quo*.¹⁰¹

At the hearing, the Village's evidence in terms of argument, testimony and offer of proof, and because in my opinion the Village's showing fell so far short of the showing required to change the *status quo*, I issued a bench ruling adopting the Union's position of no change to the *status quo* concerning minimum manning and advised the parties that I would also put the rationale for that ruling in this award.¹⁰²

The sum and substance of the Village's position and evidence is that the present manning provisions are too costly in terms of causing overtime through hirebacks to meet the minimum manning levels required by the Firefighter Agreement; manning levels can be reduced without harm to response time and safety; and the existing manning requirements tie the Chief's hands in terms of flexibility.

Specifically, according to the Village:¹⁰³

MS. SOBOTA: ... Now, Mr. Arbitrator, you will hear testimony as the hearing proceeds that the status quo no longer works. The village is paying hundreds of thousands of dollars, I think actually even millions, ... because of the minimum manning language as it stands now, and the issue that arises with manning is having the four on an engine.

¹⁰¹ Tr. 411, 638.

¹⁰² Tr. 631-649. Given the lack of support for reasons justifying a change in the minimum manning language as presented by the Village, the purpose of the bench ruling was to avoid further protracting and already protracted hearing. Had a bench ruling not issued, the Union would have been forced to consume much time rebutting evidence and arguments that I already knew were insufficient to meet the Village's burden on this issue. In my opinion, to not issue a bench ruling would have resulted in a waste of the parties' valuable money and time.

¹⁰³ Tr. 463-464, 539-543.

... [T]he village is proposing to maintain the daily staffing of 21 employees, which is the status quo, but having the authorization that if the village -- if the staffing were to fall below 21 on a particular day, that the village could, at the chief's discretion, decrease the manning on an engine to three employees. At no point in time will the staffing ever be decreased to less than three employees on an engine.

* * *

... [F]ire prevention technology, as well as building codes, have evolved and improved drastically since the language was added to the CBA, making far fewer fires annually and providing for increased safety for the firefighters on the scene.

* * *

Unfortunately, the chief's hands are tied when it comes to staffing an apparatus due to the minimum manning language contained in the collective bargaining agreement.

* * *

The chief has to call in overtime on a daily basis to meet the staffing levels currently required under the collective bargaining agreement. ...

* * *

The department is currently hemorrhaging money, and the village is consistently spending over a million dollars in overtime alone, including a projected \$1.8 million this year.

* * *

The average overtime pay to an individual firefighter this year is approximately \$30,000, and that's in addition to their salary, which you'll hear, the average salary is about \$84,000 for a firefighter.

* * *

The Village needs a solution to the growing overtime problem and the chief's inability to manage the fire department

Chief of Fire/EMS George Sheets testified that the Village could safely operate an engine with three rather four employees as currently required by the minimum manning provisions in Section 7.9(b) (“[o]n each engine: four (4) employees”):¹⁰⁴

Q. Did you make any opinions as far as whether or not Oak Lawn could safely operate an engine with three persons?

In responding to a structure fire, did you come to any opinions about whether or not the village could operate an engine safely with three persons?

A. They could.

Further, according to Chief Sheets:¹⁰⁵

Q. And can you explain how often you have to call in overtime to cover the minimum manning?

A. It's every day.

Q. And why is that?

A. It's because we have to maintain the 21 staffing. We have a provision where six people can be off at one time. We have reduced staff over the years.

So all that contributes to why overtime was called. We have sick time, we have injury leave that, again, contributes to the overtime that we're face with daily.

Q. And how does that impact the fire department?

A. Well, financially, it's not good. When you're looking at \$1.8 million in overtime a year, certainly, that's not good.

* * *

Q. ... Do you think you have to call in daily for overtime?

A. If I had the flexibility to go down to three?

¹⁰⁴ Tr. 518-519.

¹⁰⁵ Tr. 546-547, 571-572.

Q. Yes.

A. No.

* * *

Q. What's the actual budgeted amount for overtime this year?

A. We budgeted \$500,000. And the reason why I budgeted that is that if we had the flexibility to go down to three, I believe that \$500,000 will be more than enough in the overtime budget to cover it. ...

Village Finance Director Brian Hanigan testified that overtime in the Fire Department was approximately \$200,000 in 2007 and "I think this year's run rate will be about 1.8 million."¹⁰⁶ According to Hanigan, in the prior year (2012), "I think it was about 1.5 [million] it's steadily increased from 2007."¹⁰⁷ Further, Hanigan testified that no other Village department had overtime in excess of \$1 million.¹⁰⁸

The Village also offered a witness to give expert testimony, Steven Brezler of TriData - "... an internationally and nationally recognized firm specializing in emergency services delivery, not just in terms of fire suppression and EMS, but also doing data analysis and work internationally in terms of best practices for fire safety, emergency response, public education."¹⁰⁹ In his role at TriData, Brezler functions as an analyst and expert witness and "... my particular expertise is in the area in looking at staffing, calculating staffing factors, which is kind of a numerical calculation, to determine how many full-time equivalent

¹⁰⁶ Tr. 593. See also, Tr. 607.

¹⁰⁷ Tr. 609.

¹⁰⁸ Tr. 611.

¹⁰⁹ Tr. 481. Brezler was offered as an expert witness and, for purposes of this hearing, I accepted him as such. Tr. 462, 471-472.

firefighters are needed for a particular deployment model, you know, number of stations, units, hours per week.”¹¹⁰

Brezler did an analysis of the Department’s activities with respect to staffing needs focusing upon the four employee manning requirement on engines, but “... not looking at the financial aspects ... [i]t was merely to get to the issue of whether or not a three-person unit could be effective and efficient in Oak Lawn.”¹¹¹ Brezler explained his study.¹¹² Brezler concluded that the Department “... in fact, could operate with three persons”¹¹³

For purposes of this case, even with the testimony of Chief Sheets, Finance Director Hanigan and Brezler (assuming that Brezler qualifies as an expert witness as opposed to a consultant) as well as the Village’s position that maintaining the *status quo* on manning is costly in terms of overtime to meet the Village’s contractual obligations flowing from the manning provisions in Section 7.9 and taking that testimony in a light most favorable to the Village, the Village’s showing on minimum manning is far short of the necessary showing to change the *status quo* – particularly on an issue like this.¹¹⁴

First, the parties agreed in the *Firefighter Agreement* at Section 7.9(a) that minimum manning is a *safety* issue – both for the public and for the employees – with the language “[t]he parties recognize that *for purposes of efficient response to emergency situations and for reasons of employee safety, sufficient*

¹¹⁰ Tr. 483, 486.

¹¹¹ Tr. 486-487. The study is documented in Village Exh. 60.

¹¹² Tr. 486-516.

¹¹³ Tr. 512.

¹¹⁴ By seeking to change the manning language, the Village placed this issue before me therefore agreeing that I have authority to address it in this proceeding.

personnel and apparatus need to be maintained in a state of readiness at all times ... [i]f the number of on duty personnel falls below the daily minimums, employees shall be hired back pursuant to Section 6.4. 'Overtime Distribution' [emphasis added]. The Village's proposal removes that mutual acknowledgment that minimum manning is about safety for the public and the employees and essentially replaces that language with decisions grounded in costs. The Village conceded that the real problem on the manning issue is cost:¹¹⁵

ARBITRATOR BENN: Hold on a second. Why is it broken?

MS. SOBOTA: The overtime cost to the village --

ARBITRATOR BENN: It's economic?

MS. SOBOTA: It's economic.

ARBITRATOR BENN: How long has this system been in place?

MS. MOSS: 20 years.

MR. O'GRADY: 1992.

As discussed *supra* at IV(A), because of the very conservative nature of this process, interest arbitration frowns upon breakthroughs and changes to the *status quo*, unless a demonstration is made that the existing system is broken. And the Village's offered expert Brezler admitted that the existing manning system is *not* broken. Brezler testified:¹¹⁶

ARBITRATOR BENN: What you're saying -- you were very careful with your words. You said three would be adequate, to operate with three. Could, would.

You're not saying that it's a hindrance to operate with four [the present level]. You're saying they could --

¹¹⁵ Tr. 464-465.

¹¹⁶ Tr. 514-515.

THE WITNESS: They could do it, yes, they could very well.

ARBITRATOR BENN: Bur four is not a hindrance.

THE WITNESS: Four is not a hindrance.

If the current system is “not a hindrance”, then it is not “broken” requiring a change by me. At best, the current system is just costly due to overtime needed to meet the contractually required manning levels which have been the *status quo* for 20 years and have been premised upon safety.¹¹⁷

Second, the Village argues that, nevertheless, the manning system which has been in place for 20 years is “broken” because of the overtime costs involved – “[i]t’s economic”.¹¹⁸ However, just because a system is costly does not mean that the system is broken and must be changed by an interest arbitrator in this very conservative process. If the change is not warranted by application of standards used by interest arbitrators and cannot be changed through the

¹¹⁷ The Union did not concede that Brezler was an expert or that his conclusion as a proffered expert that manning can be reduced without compromising safety was a correct conclusion. According to the Union (Tr. 467, 471):

MS. MOSS: ... [W]hether this individual [Brezler] is an expert remains to be seen, but I can put a witness on, and I can say that we disagree ...
... They’re going to put on a witness that says it’s safe to reduce it; we’re going to put on witnesses that say[s] it’s unsafe to reduce it, it’s against the standards.

* * *

... [W]e haven’t determined he’s an expert yet.

ARBITRATOR BENN: Let’s assume he is.

MS. MOSS: Let’s assume he is.

And he’s going to testify that this can be done safely, okay? And we’re going to bring in somebody to counter that.

Brezler’s testimony was presented as part of an offer of proof by the Village on this issue. I have given the Village the complete benefit of the doubt that Brezler is an expert and on what Brezler would conclude as an expert. As discussed, that is just not enough to meet the Village’s burden on this issue. Brezler’s proffered expert testimony did not go to the ultimate question before me – *i.e.*, not whether the Village could safely respond with three rather than four employees on an engine, but whether the existing manning system is broken. See Tr. 471-473. And again, in any event, Brezler testified that the existing manning system is *not* broken because under the existing system of four on an engine “they could do it, yes, they could very well ... [f]our is not a hindrance.” Tr. 514-515. For all proposes, that really ends the discussion.

¹¹⁸ Tr. 464-465.

collective bargaining process prior to interest arbitration, then the impact of those maintained conditions must be adjusted through the decision making power of those given the authority to do so – *i.e.*, the Village's elected officials and administrators. *See Highland Park Sergeants Unit, supra* at 9:

Interest arbitrators follow statutory factors deemed applicable which are found in Section 14(h) of the IPLRA. Interest arbitrators do not make political decisions concerning the impact of their decisions – that is appropriately left to elected officials and appointed administrators. If application of the statutory factors by an interest arbitrator results in requiring payment of a benefit which proves to be too costly (here, for example, the maintenance of certain benefits), how the City reacts to having to meet its financial obligations for payment of that benefit either in terms of budgeting funds, maintaining staff levels, delivering services, etc., is not for an interest arbitrator to decide. Those kinds of decisions are for the City's elected officials and administrators. Putting it bluntly, if maintenance of a benefit which cannot be changed through the interest arbitration process proves too costly to continue at current levels, then layoffs or leaving positions unfilled which are vacated through attrition – the “virtual” layoff – could result (either in a bargaining unit involved in the interest arbitration or in some other group of employees, represented or unrepresented) or diminished services delivered. Or, revenues may have to be increased, depending upon the importance of the service to be delivered. The dynamics of the tugging of the entitlements of the employees against the reality of what could happen if benefits prove to be too costly but are maintained and factoring in the need for providing services to the public and the costs which the taxpayers must ultimately bear, is the brew that forces realities through the collective bargaining process. Those decisions are simply not for an interest arbitrator to make.

The Village recognizes that this is really a political and managerial decision concerning the Village's use of its resources and the Village has options. According to the Village:¹¹⁹

¹¹⁹ Tr. 542-544.

MS. SOBOTA: ... The overtime spent in the fire department is adding to the growing budget deficit, and the village needs to curtail the overtime spending as soon as possible, or the union will force layoffs of other village employees so the village continue to subsidize the fire department's overtime.

* * *

ARBITRATOR BENN: Why aren't these political issues?

MS. SOBOTA: There are political issues as well.

Finance Director Hanigan reiterated those options:¹²⁰

Q. What options does the village have if the village is not able to obtain relief in the fire department overtime spending, based on your assessment?

A. Well, I think there's a number of areas that my finance group are going to look at, one of which is to have significant cutbacks in personnel, layoffs, call it whatever you want, elimination of positions.

But ultimately, I think it means that the village is going to have to provide less services to residents, whatever that means.

The Village seeks a sea change to the manning system – specifically, the ability to reduce minimum manning from four to three employees on an engine, i.e., a 25% reduction – when the system has been in place for 20 years and was formulated with the mutual intent “... for purposes of efficient response to emergency situations and for reasons of employee safety ...” with a mandate that if those agreed upon levels are not met, “... employees *shall* be hired back pursuant to Section 6.4. ‘Overtime Distribution’” as expressed in Section 7.9(a) of the Firefighter Agreement [emphasis added]. The Village does not seek this sea change because the manning system is operationally broken. Rather, the Village seeks this sea change because the manning system is costly. That is

¹²⁰ Tr. 611-612.

not a basis for an interest arbitrator to change such a safety provision as important as minimum manning. Where one party (here, the Union) seeks to maintain the *status quo* and there is no demonstration by the party seeking the change (here, the Village) that the system is broken, that kind of change must come through the bargaining process.¹²¹

¹²¹ Section 14(h)(3) of the IPLRA lists “[t]he interests and welfare of the public and the financial ability of the unit of government to meet those costs” as an applicable factor for consideration by me.

With respect to “... the financial ability of the unit of government to meet those costs”, the Village is not claiming an inability to pay (Tr. 179, 181):

ARBITRATOR BENN: Are you claiming an inability to pay? Are you saying --

MR. O'GRADY: It's not an inability to pay. It's the ability to pay more. ...

* * *

MS. MOSS: I understand that response to your inquiry, though, to be within the meaning of the statute, the village is not claiming an inability to pay.

Are you prepared to stipulate to that on the record?

MR. O'GRADY: We're not putting forward a defense of an inability to pay.

At most, the Village's claim here is a reluctance to pay or difficulty to pay. That is not sufficient to show that the manning system is broken and in need of change by an interest arbitrator.

With respect to the “interests an welfare of the public” portion of this factor, putting aside that reducing minimum manning on an engine by 25% goes against that parties' stated intent in Section 7.9(a) that the manning provisions were established “... for purposes of efficient response to emergency situations and for reasons of employee safety ...”, it is not for me to determine that it is in the “interests an welfare of the public” to reduce costs generated by overtime hirebacks to meet minimum manning requirements. As discussed in *Highland Park Sergeants Unit*, *supra* at 9, decisions concerning the consequences flowing from this conservative process and having to meet the Village's contractual obligations are for the Village's elected officials and administrators.

For the Village and the Union, this is not hypothetical. When faced with extreme economic difficulties in the past, the Village took action to announce layoffs of bargaining unit members and, in return, got the Variance Agreement with concessions and guaranteed job security in exchange. Union Exh. 1 at Tab 5. See discussion *supra* at VI(A)(2)(c)(4). The point is that the Village through its elected officials and administrators acted to meet a financial difficulty and *the parties* – not an interest arbitrator – made the necessary adjustments. And while this may not work again in this unit because the minimum manning provisions will still be there requiring overtime to meet the required levels, if it gets to the point where the Village has to act, the Village may have to look elsewhere within the Village. But again, it is the Village that has to decide if it must initiate that process through the exercise of political and managerial judgment. That initiation does not come through me through the changing of a *status quo* that has been in existence for 20 years and is premised upon safety.

Given that the *status quo* is premised upon a safety issue, it would take a safety issue for me to change the *status quo* (e.g., that there were sufficient instances of sub-par response times or ability to meet emergencies due to insufficient numbers of employees on the engines). That is not the case here. As the Village argues, as to the issue here, “[i]t's economic”. Tr. 464-465 In this case, “[i]t's economic” is just not enough.

However, according to the Village, “... we tried to negotiate this ... [w]e sat there and said, our checkbook’s open, and they [the Union] said they didn’t want to discuss it, and so here we are.”¹²² That argument does not change the result in this case.

As part of the Village’s efforts to convince the Union to move off the manning *status quo* and as reflected in the Village’s Initial Final Offer to the Union in this proceeding, the Village offered “[i]n exchange for the above-discussed variance on manning the Village agrees to give the Union a one-time payment of \$200,000 in a check payable to Local 3405.”¹²³ That “... one-time payment of \$200,000 in a check payable to Local 3405” offer made by the Village was part of the Union’s position taken on the first day of the hearing “... that the employer’s minimum manning proposal was unlawful”¹²⁴

The legality of such an offer by the Village to persuade the Union to move off its position of maintenance of the *status quo* on minimum manning is not before me because, as discussed *supra* at V and the appendix to this award, I allowed the Village to amend its final offer and that offer of payment to the Union is not in the Village’s Amended Final Offer.¹²⁵ If the Village now contends that “[i]n exchange for the above-discussed variance on manning the Village agrees to give the Union a one-time payment of \$200,000 in a check payable to Local 3405” should be considered by me as negotiating as part of its position that “... we tried to negotiate this ... [w]e sat there and said, our checkbook’s open, and they said they [the Union] didn’t want to discuss it, and so here we

¹²² Tr. 470.

¹²³ Village Initial Final Offer at Section 7.9; Union Exh. 1 at Tabs 22, 29.

¹²⁴ Tr. 25. *See also*, Union Opposition at 2; Union Brief at 10.

¹²⁵ *See* Village Amended Final Offer at 4-5.

are”, the substance and status of that offer are not before me because the Village took advantage of my allowing it to amend its final offer and deleted the \$200,000 offer to the Union.¹²⁶

But in any event, just because the Village was not successful in convincing the Union to change its position on maintaining the *status quo* on minimum manning does not mean that I must change it. The Village still has the heavy burden of showing that the existing minimum manning system is broken. The Village has shown that maintenance of the *status quo* on minimum manning is costly. However, taking everything in a light most favorable to the Village, the Village has not shown that the *status quo* on minimum manning is broken and must be changed through this conservative process.

Finally, during these proceedings Arbitrator Elliott Goldstein’s decision in *City of Rockford and City Fire Fighters Local 413, IAFF, S-MA-12-108* (September 30, 2013) came up, where Arbitrator Goldstein changed the *status quo* on “company strength” (Rockford’s equivalent of Oak Lawn’s minimum manning provisions).¹²⁷ *Rockford* does not change the result in this case.

Rockford is clearly distinguishable from this case in that in *Rockford*, Arbitrator Goldstein adopted Rockford’s position on minimum manning after finding that *both* parties sought to change the *status quo* (*id.* at 60-61):

... In any case, preserving the status quo is not a possibility here, I rule, given the last and best offers.

¹²⁶ I must assume that the monetary offer of \$200,000 made to the Union, in writing, was for distribution of those funds to the bargaining unit as part of a *quid pro quo* for relaxing language on minimum manning – an offer which was rejected as the Union throughout has sought to maintain the existing minimum manning language. But again, I express no opinion on the legality of such an offer. It is just not before me.

¹²⁷ Tr. 640. Arbitrator Goldstein’s award in *Rockford* is reported at:
www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/S-MA-12-108.pdf

Each party proposes to change Section 4.1 [Company Strength], I again emphasize.

That is not the case here. The Village seeks to change the *status quo*, but the Union does not.¹²⁸ When both parties seek to change the *status quo*, the standards are far different from circumstances where one party seeks to make that change but the other party seeks to maintain the *status quo*. Where both parties seek to change the *status quo*, the arbitrator has to sort out which is the more reasonable position in accord with the applicable statutory factors. Where one party seeks to change the *status quo*, the burden is on that party seeking to make the change to show that the existing system is broken and in need of repair. Because both parties sought to change the *status quo* in *Rockford* and only the Village seeks to change the *status quo* here, Arbitrator Goldstein's decision in *Rockford* therefore does not change the result.

As I ruled at the hearing, the Village has not met its burden to change the minimum manning provisions of the Firefighter Agreement. The Union's position to maintain the *status quo* is adopted.

5. Wellness Fitness Imitative

The Union seeks language in the Firefighter Agreement implementing a program called the Wellness Fitness Initiative ("WFI").¹²⁹

¹²⁸ Tr. 638.

¹²⁹ Union Final Offer (Firefighter Agreement) at 4; Union Brief at 64-80.

In its Initial Final Offer, the Village also proposed language implementing WFI.¹³⁰ However, after I permitted the Village to amend its final offer, the Village deleted implementation of WFI as a proposal.¹³¹

Aside from its general contention that I did not have authority to allow the Village to amend its final offer, the Union makes two arguments concerning the Village's offer on WFI.

First, the Union argues that even if I had the authority to allow the Village to amend its final offer, the Village's change of position concerning WFI went beyond the scope of what it was allowed to amend.

Second, the Union argues that even if the Village was allowed to amend its final offer concerning WFI, "WFI represents the *status quo*".¹³²

The Union's argument that I did not have authority to allow an amendment to the Village's final offer is rejected. In this case, I had that authority. See discussion *supra* at V and the Order attached to this award as an appendix.

The Union argument that the kind of amendment made by the Village to its Initial Final Offer concerning WFI was outside the scope of what was allowed by me in the Order allowing the Village to make an amended final offer is a strong one. The Order focused upon the Union's argument that the Village made "unlawful" offers (*e.g.*, the wage offer that sought to grant a wage increase in the year prior to the effective date of this Firefighter Agreement) and

¹³⁰ Village Initial Final Offer at 4, Section 5.16(b).

¹³¹ Village Amended Final Offer at 4, Section 5.16 ("Withdrawn"); Village Brief at 6 ("Reject, leave Status Quo").

¹³² Union Brief at 69-70.

my desire not to force a party to take an unlawful position (if such were the case) by not allowing it to amend its final offer which would necessitate the automatic granting the other party's offer.¹³³ Clearly, the thrust of the Order allowing the amendment was directed toward what might have been unlawful wage offers made by the Village (if the Union's position was correct) and allowing the Village to correct its final offer so as to allow a decision on the merits of the parties' arguments rather than what would have amounted to a decision based on, for all purposes, a legal form of "gotcha". These cases are too important to the parties and the public to allow that to occur. However, WFI was never raised as being such an "unlawful" offer and, as the Union argues, it appears that the Village took advantage of the ability to cure what might be an unlawful wage offer to change its position on a topic that was never raised by the Union as being unlawful.

I do not have to address the Union's first argument concerning whether the Village could amend its offer on WFI as not being part of the authority to amend given to the Village by me because the Union is correct that "WFI represents the *status quo*."

Language addressing WFI was not part of the prior Firefighter Agreement. However, the evidence sufficiently shows that during the term of the prior Firefighter Agreement, the parties implemented *the concept* of WFI making it the *status quo* as of December 31, 2011 when the prior Firefighter Agreement and its roll-over provisions expired.

In its brief, the Union correctly summarizes the evidence:¹³⁴

¹³³ Order at 3-4.

¹³⁴ Union Brief at 70-72 [record citations omitted].

Firefighting remains one of the most dangerous occupations in the world, thus making it essential that firefighters maintain a high level of fitness and wellness. In 1996, the International Association of Firefighters and the International Association of Fire Chiefs jointly developed the Fire Service Joint Labor Management Wellness/Fitness Initiative. The purpose of this joint initiative is to provide preventive and occupational health care through medical assessments, a fitness program, injury rehabilitation, a behavioral health program and data collection. The WFI has a proven track record of saving Fire Departments money with a demonstrated average annual savings of just under \$83,000.

In 2011, within the Village, the Joint Labor-Management Committee was formed for the purpose of implementing the beginning stages of the WFI. The Village began implementation of the program through the purchase of new exercise equipment that was placed in all three stations.

In 2012, the Joint Labor-Management Committee met and established its top goal as implementation of the WFI, along with its other goals of sending individuals to become peer fitness trainers and to update the required annual physicals. The Union paid for certification classes for peer fitness trainers and five of the six individuals sent to the classes have become certified. As part of the parties' joint effort, the Village paid overtime to staff the shifts in order to allow these individuals to receive the peer fitness training. The parties have been in negotiations with Christ Hospital, the entity that conducts annual physical exams, to update their physicals so that they comply with the WFI standards for physical exams. Furthermore, on November 16, 2011, then-Deputy Chief Tutko, then-Bureau Chief Tregoning, Firefighter Robert Lanz ("Lanz"), Secretary-Treasurer of Local 3405, and Alex Lopes, Manager of Market Analysis and Strategic Planning for Public Safety Medical, examined the Village's medical evaluation process and came up with a proposal on how to fix the problems with the process. Later, on July 8, 2013, then-Deputy Fire Chief Boman, Bureau Chief Bettenhausen, Bureau Chief McGeever, Lanz and Lora Lex, Director of Client Services for Public Safety Medical, produced an updated proposal recommending improvements to the Village's medical evaluation process. In these documents, it is noted that "[t]he department indicates that they would like to implement the IAFF/IAFC Wellness-Fitness Initiative."

Consistent with the above, the Village's Initial Final Offer sought to formalize WFI with contract language:¹³⁵

- b. The IAFF/IAFC Wellness & Fitness Initiative and Incentive Program shall be implemented to encourage and promote healthier employees and to reduce sick leave use and the frequency and severity of injuries within the ranks of the Oak Lawn Fire Department. Participation in this program shall be mandatory. Employees must maintain a minimum compliance of 75%. The parties acknowledge that the call volume may prohibit an employee from participating in the program on any given duty day. Station Officers shall document their crew's participation in the firehouse software.

Therefore, clearly, *the concept* of WFI – was in place and therefore the *status quo* when the prior Firefighter Agreement terminated. The most telling evidence of that is the Village's Initial Final Offer quoted above – *i.e.*, that “[t]he IAFF/IAFC Wellness & Fitness Initiative and Incentive Program *shall be* implemented ... ” [emphasis added]. Thus, the Union correctly observes “... the Union's proposal simply serves to memorialize the parties' practice and their agreement to implement WFI, which had become the *status quo*.”¹³⁶

The Village's Amended Final Offer retrenches from the *status quo* by stating that its offer on WFI was “[w]ithdrawn”.¹³⁷ However, because the concept of WFI is the *status quo*, the Village must do more than just withdraw its offer. As discussed, *supra* at IV(A), the Village must now show that the concept of WFI as the *status quo* is broken. The Village obviously cannot make that showing, particularly because the Village initially offered to codify WFI into the Fire-

¹³⁵ Village Initial Final Offer at 4, Section 5.16(b).

¹³⁶ Union Brief at 78.

¹³⁷ Village Amended Final Offer at 4, Section 5.16(b).

fighter Agreement as evidenced by the Village's Initial Final Offer and the general notion (as also expressed in the Village's Initial Final Offer and the evidence presented) that WFI is meant "... to encourage and promote healthier employees and to reduce sick leave use and the frequency and severity of injuries within the ranks of the Oak Lawn Fire Department."¹³⁸ There is nothing broken about that.

While the Union asserts that WFI will "save the Village money", the Village asserts that it analyzed the costs of WFI and "determined that they were too great"¹³⁹ As with minimum manning discussed *supra* at VI(A)(4), a high cost of a working condition does not show a system is broken justifying a change to the *status quo* – it just shows the system is costly. In any event, this part of the discussion addresses the *concept* of WFI as the *status quo*, not the implementation of WFI. That is discussed *infra* at VI(A)(6).

The Union's offer to codify WFI is therefore adopted.

6. Paid Time Off

With WFI in place, the next question is how to implement the mechanics? The Union proposes "... an incentive program, by reducing and combining already existing contractual benefits"¹⁴⁰ Targeting Sections 5.7 (Sick Leave) and 5.9 (Compassionate Leave), the Union seeks to change Section 5.7 to a "Paid Time Off" provision, reducing the equivalent of shifts for sick leave by half, eliminate Compassionate Leave and replace that with a paid time off incentive program with the ability to sell back up to seven days of sick time per

¹³⁸ Village Initial Final Offer at 4, Section 5.16(b).

¹³⁹ Union Brief at 70; Village Brief at 105.

¹⁴⁰ Union Brief at 72. *See generally*, Union Final Offer (Firefighter Agreement) at 2-5.

year.¹⁴¹ Further, according to the Union, in order to sell back sick days, an employee must have a 75% participation rate in WFI and maintain 720 hours of sick time.¹⁴² The Union views this plan with the changes in benefits as a “... proposal [that] will result in cost savings to the Village.”¹⁴³

Because the Village used the Order allowing it to amend its Initial Final Offer from implementing WFI to offer “[w]ithdrawn” in its Amended Final Offer on the WFI issue (which, as discussed, *supra* at VI(A)(5) was not a return to the *status quo*), aside from contending that the Union’s offer will not save money but the costs of WFI “... were too great ...”, at no time has the Village offered details on the mechanics of implementing WFI.¹⁴⁴

At this point, I have imposed WFI as requested by the Union. Although the task of putting together language to accomplish that result may well have substantive implications on benefits, I view the task primarily as one of drafting language to implement WFI. WFI is now going to be in the Firefighter Agreement as requested by the Union. The question now is the language which must be constructed to implement WFI. As I have done in other interest arbitration awards and as I am doing here (*see IX, infra*), this drafting of implementation language must be undertaken by the parties in the first instance to attempt to come up with language – language which, like other drafting tasks, may have substantive implications on benefit levels. But the point here is to allow the parties in the first instance to come up with language that has the primary goal is to serve as an incentive for WFI. As discussed *infra* at IX, be-

¹⁴¹ Union Brief at 73.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Union Brief at 70; Village Brief at 105.

cause I am retaining jurisdiction over language drafting issues, if the parties cannot agree upon implementing language for WFI, I will impose that language based on one of the parties' positions.¹⁴⁵

7. IRC 457 Plan

An "IRC 457 Plan" is a deferred compensation plan allowing for tax benefits pursuant to the Internal Revenue Code ("IRC").¹⁴⁶ The employer provides the plan and the employee defers compensation into the plan on a pre-tax basis.¹⁴⁷

In the predecessor Firefighter Agreement, the parties established a procedure to explore establishing an IRC 457 Plan and, if they agreed to such a plan, that it would be incorporated into the Firefighter Agreement:

Section 7.17 IRC 457 Plan. By January 1, 2009 the parties shall establish a committee for the purpose of exploring an IRC 457 plan. The Committee shall consist of two (2) members appointed by the Village and two (2) members appointed by the Union. If the parties reach agreement, the terms of the agreement shall be incorporated herein.

¹⁴⁵ Given that this Agreement expires on December 31, 2014 (*see discussion supra* at VI(A)(1) concerning duration) and because the parties may well be entering negotiations for a successor Agreement to this Agreement in the next several months, the parties – only by mutual consent – may wish to defer this portion of the drafting task to those negotiations.

¹⁴⁶ 26 U.S. Code § 457:

Deferred compensation plans of State and local governments and tax-exempt organizations.

(a) Year of inclusion in gross income

(1) In general

Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

¹⁴⁷ *Id.*

In this proceeding, the Union proposes the following change to the IRC 457 Plan language:¹⁴⁸

Section 7.17 IRC 457 Plan. ~~By January 1, 2009 the parties shall establish a committee for the purpose of exploring an IRC 457 plan. The Committee shall consist of two (2) members appointed by the Village and two (2) members appointed by the Union. If the parties reach agreement, the terms of the agreement shall be incorporated herein. The Village shall offer an IRC 457 Plan of Local 3405's choice.~~

The Village seeks “ ... to maintain the status quo of allowing the bargaining unit members to continue to participate in any IRC 457 Plans offered by the Village, like all other Village employees ”¹⁴⁹

As always, the initial question is what is the *status quo*? Usually, that is found by examining the language that one or both parties seek to change. However, the language in Section 7.17 of the predecessor Firefighter Agreement did not, with any finality, establish the *status quo*. Instead, the language in Section 7.17 set up a procedure to explore an IRC plan and then, only if there was agreement, incorporate the terms of that agreement into the predecessor Firefighter Agreement.

According to the Union, such an agreement was reached [emphasis added]:¹⁵⁰

... In January, 2009, in accordance with Article VII, Section 7.17 of the Fire Agreement, [Robert] Lanz, then-President of Local 3405, requested that the Village meet concerning the IRC 457 Plan. Although the contractual language provides that the committee was to be made up of two members of the

¹⁴⁸ Union Final Offer (Firefighter Agreement) at 5; Union Brief at 84.

¹⁴⁹ Village Brief at 171.

¹⁵⁰ Union Brief at 85 [record citations omitted].

Village and two members of Local 3405, the Union decided it was best to involve the other bargaining units, so representatives of all of the other bargaining units were invited to participate in the meeting. *All parties agreed to adopt AIG as the IRC 457 plan. ...*

However, according to the Union, although agreement was reached “... to adopt AIG as the IRC 457 plan”, the requirements of Section 7.17 were not followed by the Village – *i.e.*, “[i]f the parties reach agreement, the terms of the agreement shall be incorporated herein”:¹⁵¹

... However, [Village Manager Larry] Deetjen unilaterally later vetoed this decision and proceeded to implement an ICMA plan effective June 1, 2010. The Village also offered a plan through Hartford. Out of approximately three hundred and fifty (350) active, full-time employees, only two are in the unilaterally imposed ICMA plan selected by Deetjen.

The Union met its obligation under the terms of the Agreement to meet with the Village and agree on a plan. The Village, however, reneged on its obligation under the terms of the Agreement. This is a deferred compensation plan that is solely the employees’ money and is not in any way subsidized by the Village. The Union wants more flexibility to determine how deferred compensation money is invested. The Union does not want to require the Village to get rid of either of its current plans, but rather, the Union wants a third option. The record demonstrates that the current language is broken because the Village reneged on its obligation to implement the agreed upon plan. The current contract language is obsolete as the parties met and resolved the issue.

The Union did not grieve the Village’s alleged failure to incorporate the agreement to use the AIG IRC 457 Plan as required by the language in Section 7.17 that “the terms of the agreement shall be incorporated herein.”¹⁵² Instead, the Union “... chose to address it in these negotiations.”¹⁵³

¹⁵¹ *Id.*

¹⁵² Tr. 685-686.

¹⁵³ *Id.*

In this proceeding, the Union does not seek implementation of the AIG IRC 457 Plan as it alleges was previously agreed to by the parties under the procedure established by Section 7.17 of the predecessor Firefighter Agreement. Instead, the Union seeks broader language allowing it to choose an IRC 457 Plan, specifically that “[t]he Village shall offer an IRC 457 Plan of Local 3405’s choice.”¹⁵⁴

The Village disputes the Union’s contention that there was an agreement to implement the AIG IRC 457 Plan (and thus an obligation under Section 7.17 to incorporate those terms into the predecessor Firefighter Agreement).¹⁵⁵ In this proceeding, the Village contends “... the Union’s proposal should be rejected and the Village’s proposal to maintain the status quo of allowing the bargaining unit members to continue to participate in any IRC 457 Plans offered by the Village, like all other Village employees should be accepted.”¹⁵⁶

I am therefore faced with two questions. First, what is the *status quo*? Second, ultimately, is the *status quo* broken and in need of repair?

I can’t answer the second question because I don’t know the answer to the first question.

The Union contends that “[a]ll parties agreed to adopt AIG as the IRC 457 plan ... [t]he Union met its obligation under the terms of the Agreement to meet with the Village and agree on a plan [and t]he Village, however, reneged on its obligation under the terms of the Agreement.”¹⁵⁷ If that is accurate, the *status quo* is the AIG IRC 457 Plan. However, the Union never grieved the Village’s al-

¹⁵⁴ Union Final Offer (Firefighter Agreement) at 5; Union Brief at 84.

¹⁵⁵ Village Brief at 125.

¹⁵⁶ *Id.* at 171.

¹⁵⁷ Union Brief at 85.

leged failure to implement that plan as required by Section 7.17 of the predecessor Firefighter Agreement.

Here, the Union argues that “... the current language is broken because the Village reneged on its obligation to implement the agreed upon plan ... [and t]he current contract language is obsolete as the parties met and resolved the issue.”¹⁵⁸ But if the Union is correct that there was an agreement between the parties for the AIG IRC 457 Plan, the language in Section 7.17 is not “obsolete” – it just hasn’t been followed. If the Union is correct that there was an agreement to implement the AIG IRC 457 Plan, that means the AIG IRC 457 Plan is the *status quo* and to get the language it seeks (“[t]he Village shall offer an IRC 457 Plan of Local 3405’s choice”), the Union would have to show that the AIG IRC 457 Plan is broken. By the same token, for the Village to prevail on its position, it would have to show a “... status quo of allowing the bargaining unit members to continue to participate in any IRC 457 Plans offered by the Village, like all other Village employees”¹⁵⁹

So again, what is the *status quo*? Is it an agreement for the AIG IRC 457 Plan which was not incorporated as required by Section 7.17 of the predecessor Firefighter Agreement or something else – i.e., “... IRC 457 Plans offered by the Village”?

From what is before me, I just don’t know.

What this means is this is not a dispute for an interest arbitrator to decide. This is a dispute under the grievance procedure to be decided by a grievance arbitrator concerning an alleged violation of Section 7.17. The specific is-

¹⁵⁸ *Id.*

¹⁵⁹ Village Brief at 171.

sue is whether there was an agreement under the language in Section 7.17 to use the AIG IRC 457 Plan and did the Village violate that section when it failed to implement that agreement to use the AIG IRC 457 Plan? If there was an agreement as the Union alleges, then by operation of the language in Section 7.17, "... the terms of the agreement shall be incorporated herein." The Union's argument that the Village reneged does not show that the language in Section 7.17 is broken. If the Village reneged as the Union asserts, then the Union's position just shows that the Village did not comply with implementing the agreement for the AIG IRC 457 Plan as Section 7.17 required.

Absent agreement by the parties, the *status quo* in this instance will have to first be determined by a grievance arbitrator. And if there was an agreement which was breached by the Village by not adopting the AIG IRC 457 Plan which requires a remedy, that also will have to be formulated by a grievance arbitrator.

Further, with respect to the Union's argument that because "[t]his is a deferred compensation plan that is solely the employees' money and is not in any way subsidized by the Village [and because t]he Union wants more flexibility to determine how deferred compensation money is invested", the change the Union seeks to require that the "[t]he Village shall offer an IRC 457 Plan of Local 3405's choice" still could not be implemented at this time in this proceeding.¹⁶⁰ To accept that argument, I would again have to find that a *status quo* is broken. But I first need to know what that *status quo* is. Until a grievance arbitrator determines what the *status quo* is (or the parties can reach such an

¹⁶⁰ Union Brief at 84-85.

agreement), an interest arbitrator cannot tell if the *status quo* it is broken and in need of repair.

The result here is quite different from the concept of the Wellness Fitness Imitative issue discussed *supra* at VI(A)(5). There, the record clearly showed what the *status quo* was for WFI. The evidence showed that the Village was in agreement that WFI was to be implemented. Here, I have a threshold dispute about whether the Village failed to implement the terms of a provision of the Firefighter Agreement as required by the Firefighter Agreement. Those terms – if they existed as asserted by the Union – constitute the *status quo* and must be first resolved by a grievance arbitrator.

The parties are free to take another stab at trying to negotiate their way out of this. However, absent that, a grievance arbitrator will first have to determine the *status quo*.

The *status quo* shall be maintained – whatever that is – which requires that that language in Section 7.17 shall remain unchanged (which is basically the Village's position). If it chooses, the Union can file a grievance protesting the failure of the Village to adopt the AIG IRC 457 Plan.¹⁶¹

8. Company Inspections

Appendix A of the predecessor Firefighter Agreement provides:

¹⁶¹ The Village will not be able to raise a timeliness arbitrability claim to such a grievance. If the Village reneged on an agreement to use the AIG IRC 457 Plan, then each time the Village did not deposit deferred compensation monies into that plan, it committed a continuing violation of its agreement to use the AIG IRC 457 Plan. Elkouri and Elkouri, *How Arbitration Works* (BNA, 5th ed.), 281-282 ("Many arbitrators have held that 'continuing' violations of the agreement (as opposed to a single isolated and completed transaction) give rise to 'continuing' grievances in the sense that the act complained of may be said to be repeated from day to day – each day there is a new 'occurrence'; these arbitrators have permitted the filing of such grievances at any time, this not being deemed a violation of the specific time limits stated in the agreement ...").

The Classification/Position of Daytime (40 hours per week) Fire Inspector shall receive an additional stipend of \$500.00 per month added to base salary. The following shift positions (24/48) shall receive the appropriate stipend on their base salary:

Lease Fire Photo Investigator	\$175.00 per month
Fire Photo Investigator	\$150.00 per month
Fire Auto Mechanic	\$150.00 per month
Fire Inspector (exclude co. inspection)	\$150.00 per month

The Union seeks to add a \$100 per month stipend for shift company inspections along with the provision that “[a]ll shift personnel shall receive \$100.00 per month for performing shift company inspections.”¹⁶²

The Village does not agree that additional compensation should be granted for shift company inspections.¹⁶³

This dispute had its genesis as a result of a June 28, 2011 letter from Chief Sheets to the Union advising that a new company inspection program would be implemented effective July 18, 2011 which “... will require on duty firefighters to conduct inspections of commercial and multi-family buildings as part of their regular duties and responsibilities in order to promote fire prevention throughout the Village.”¹⁶⁴

According to the Union, the Union demanded to bargain the effects of the decision to implement the Program; the parties exchanged proposals, but did not reach agreement.¹⁶⁵ The Union continued to insist that the Village was obligated to bargain over the program and the Village unilaterally implemented

¹⁶² Union Final Offer (Firefighter Agreement) at 6; Union Brief at 70-81.

¹⁶³ Village Brief at 168-170.

¹⁶⁴ Union Exh. 6 at Tab 1.

¹⁶⁵ *Id.* at Tabs 2-6; Union Brief at 81.

the program on November 25, 2011.¹⁶⁶ The Union filed a grievance, but ultimately decided to withdraw the grievance, reserving its right to address the issue, as requested by the Village, at the bargaining table.¹⁶⁷

The Union argues that inspections have been tied to a stipend because of the additional work that is required of personnel performing those activities and this is the first time the bargaining unit employees have been required to do inspections on shift.¹⁶⁸

According to the Union, each company at each station must now perform an average of ten company inspections per month and if a station has more than one company, each company is required to conduct an average of 10 company inspections per month.¹⁶⁹

Further, according to the Union:

... The evidence is clear that bargaining unit employees never previously performed these inspections. Moreover, the bargaining history demonstrates that any time bargaining unit members have performed any type of inspections, they receive a stipend for the performance of those duties. Therefore, the Union's proposal is reasonable, supported by the parties' bargaining history, and should be adopted because the performance of inspections has always been tied to the receipt of a stipend.

The Village argues that company inspections are basic, brief inspections that take no more than 10-15 minutes to perform and entail the bargaining unit members going into mom-and-pop stores in the Village to look at extension cords, check the exit signs to ensure they are properly illuminated, check

¹⁶⁶ Tr. 656; Union Exh. 6 at Tabs 7-9.

¹⁶⁷ Tr. 656-657; Union Exh. 6 at Tabs 10-14.

¹⁶⁸ Union Brief at 82.

¹⁶⁹ *Id.*; Tr. 670, 672.

to ensure that the fire extinguishers are charged, and they look at the load of the property to see what the material inside the building is; each company is responsible for performing 10 inspections per month, which equates to only one inspection per shift; and these are part of the basic underlying duties and responsibilities of all firefighters as reflected in their job description.¹⁷⁰ Therefore, according to the Village, this is not a new duty and responsibility which requires additional compensation.

The Village's position that no additional compensation should be awarded is adopted. The duties described (company fire inspections) are found in the firefighter job description and while these may be duties additional to those performed before Chief Sheets' June 28, 2011 letter, the duties do not require additional work time from the employees beyond their scheduled hours for which the employees are not compensated.¹⁷¹ And most importantly for purposes of this case and as discussed *supra* at VI(A)(2), these employees are well-compensated and this increased benefit is not warranted.

The Union has not demonstrated why employees who are well compensated should receive additional compensation for performing duties that are already encompassed by their job description.

The Village's position of no additional compensation for company fire inspections is therefore adopted.

¹⁷⁰ See Village Exh. 67 at p. 2 par. D(1) ("Firefighter/Paramedic Firefighter/EMT-B ... [p]articipates in company fire inspections and in pre-fire surveys."); Village Brief at 168-170.

¹⁷¹ *Id.* Compare, my fact-finder report in *Board of Education of the City of Chicago and Chicago Teachers Union, Local 1* (2012) at 36-51, where an increase in the work day required a recommendation for an increase in wages. That report is found at:

www2.illinois.gov/elrb/Documents/Chicago-Public-Schools-CTU-Fact-Finding-Report.pdf

That is not the case here. The employees' hours have not been increased without compensation.

9. Sick Leave Payout Upon Retirement Language

Section 5.8 of the predecessor Firefighter Agreement provides:

Section 5.8. Sick Leave Payout; Retirement. An employee hired before January 1, 1979, who retires from employment at or after age 50 with twenty (20) or more years of service and who is eligible to receive a pension under the Illinois Fire Pension Fund which is not a disability pension, shall be eligible to be paid for accumulated but unused sick leave at the time of retirement, as follows:

<u>Hire Date</u>	<u>Sick Leave Payout</u>
Prior to January 1, 1970	Up to 960 hours
On or after January 1, 1970 through December 31, 1976	Up to 480 hours
On or after January 1, 1977 through December 31, 1978	Up to 240 hours
On or after January 1, 1979	None

Calculated on the basis of an 8 hour day, forty hour week (2080) hours per year.

The Village seeks to eliminate the language from the Firefighter Agreement.¹⁷² The Union objects to removal of the language.¹⁷³

The Village sees the removal of this provision as a “clean up” of the language, because all present bargaining unit employees were hired after January 1, 1979 and thus, no employees would be entitled to the benefit.¹⁷⁴ Thus, according to the Village, the language is simply superfluous.

¹⁷² Village Amended Final Offer at 2; Village Brief at 9-10; 125-126, 181-182.

¹⁷³ Tr. 708; Union Brief at 88-89.

¹⁷⁴ Tr. 707-708; Village Brief at 125-126, 181-182.

The Union does not dispute the fact that no current employees are entitled to the benefit:¹⁷⁵

ARBITRATOR BENN: Do you agree that it doesn't apply to anyone?

MS. MOSS: It doesn't and hasn't

However, the Union desires the language to be kept in the Firefighter Agreement for "historical value":¹⁷⁶

MS. MOSS: Arbitrator Benn, that language has been historically in the collective bargaining agreement. It has remained in the collective bargaining agreement, notwithstanding the fact that for years, there have not been bargaining unit employees. It has historical value for the union, and, therefore, we are seeking to keep the status quo language in the contract.

* * *

... [W]e are currently in 2013. That language has carried over time and time again, by agreement, for historical purposes. ...

The Union's concern is the potential problem it faces should it at some time in the future seek to re-introduce the benefit because, "[i]f this provision were to be removed and the Union tried to negotiate a sick leave buyout in the future, the Village would likely argue that it is a breakthrough item."¹⁷⁷

The Union's concern is understandable, but does not warrant keeping language in the Firefighter Agreement which has no possibility of benefiting any bargaining unit employee. Because any employee hired "[o]n or after

¹⁷⁵ Tr. 708. See also, Union Brief at 88 ("... for years, it has not applied to bargaining unit members."). The Union's seniority list verifies that all employees have been hired after January 1, 1979. Union Exh. 1 at Tab 4.

¹⁷⁶ Tr. 708-709.

¹⁷⁷ Union Brief at 88.

January 1, 1979” gets “[n]one” and because all of the employees were hired after that date, this language is like the washing machine that does not and will not work. It is “broken”. The language shall therefore be removed.

However, with respect to the Union’s concern that without the language in the Firefighter Agreement, if it tries to negotiate a sick leave payout in the future it might face a “breakthrough” argument, the Union has the prior contracts containing the language and this award explaining why the language was removed. Should the Union at some time in the future seek to reintroduce the benefit, the Village will not be able to argue that this is a brand new benefit which never existed between the parties. The Village will only be able to argue the simple facts – *i.e.*, that the language was in previous Firefighter Agreements; the *status quo* became that through the passage of time no employee received the benefit; and an interest arbitrator removed the language in 2014 because it was serving no operative function.

The Village’s position that the language in Section 5.8 be removed is adopted.

10. Education And Training

Section 5.11 of the predecessor Firefighter Agreement provides for an education and training benefit.

Section 5.11. Education and Training.

a. Education Incentive. Employees covered under this Agreement who submit to the Village proof from the State Certified Schools as to earned credit hours toward the following certificate or degrees shall be compensated additionally as follows:

AA Degree	\$ 360.00
Bachelor Degree	\$ 720.00
Master’s Degree	\$1,080.00

It is understood that the Fire Department can and will utilize an employee's education for the betterment of the Village. Education incentive will be paid each regular pay day at the rate of one twenty-fourth (1/24) of the above schedule and incorporated in the employee's regular paycheck.

b. Tuition Reimbursement. The Village will reimburse employees for costs incurred for books, fees, and tuition upon successful completion of courses related to the fire service area (the Chief must approve the course as related to the fire service area which approval shall not unreasonably be withheld), and for courses necessary to complete degrees in fire service areas. Reimbursement hereunder shall be limited to no more than \$1,500 per year per employee and to no more than \$9,000 per year for all bargaining unit members.

* * *

The Village seeks to add the following language to the above-quoted sections of the Firefighter Agreement:¹⁷⁸

No employees hired after ratification of this Contract shall be eligible for the provisions of this Section, except that employees may still be eligible to receive the education compensation if they acquire a master's degree in fire services related study, as approved by the Fire Chief.

The Union seeks the *status quo* and opposes the language proposed by the Village.¹⁷⁹

The Village thus seeks a two-tiered system for this section – *i.e.*, new hires will receive a different benefit than existing employees. Under the circumstances, the Village cannot get such a system in this process. The Village seeks a major breakthrough and this process frowns upon breakthroughs. See discussion *supra* at IV(A).

¹⁷⁸ Village Amended Final Offer at 3; Village Brief at 177-181.

¹⁷⁹ Union Brief at 93-98.

In a case cited by the Union addressing two-tiered wage schedules, Arbitrator Daniel Nielsen recently stated in *Palos Heights Fire Protection District and Palos Heights Professional Firefighters Union, Local 4254, IAFF, S-MA-12-389* (2013) at 19:¹⁸⁰

... A two tiered wage schedule is the epitome of a breakthrough proposal. It is a dramatic departure from the past. It creates a new and lesser class of employees. ... Arbitration is not intended to be an innovative process, and if parties wish to plow entirely new ground, they should, if at all possible, do so voluntarily.

I agree with those quoted comments in the context of having a two-tiered education incentive and tuition reimbursement benefit.

For reasons discussed in the minimum manning section *supra* at VI(A)(4), the fact that a benefit may be costly does not, in and of itself, require the benefit be changed.

The Village argues that it “negotiated with all of its other bargaining units to eliminate the education incentive for all new hires, except those that have or obtain a master’s degree.”¹⁸¹ Assuming that to be the case, then that is how the Village must accomplish this type of breakthrough – offer something sufficient in the negotiation process to achieve that two-tiered result rather than having it imposed through this conservative process. *Palos Heights Fire Protection District, supra* at 19 (“if parties wish to plow entirely new ground, they should, if at all possible, do so voluntarily.”).

The Village also argues:¹⁸²

¹⁸⁰ www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/S-MA-12-389.pdf

¹⁸¹ Village Brief at 178.

¹⁸² *Id.* at 178-179.

... The Village is facing a significant unfunded liability in its pension contributions that will have to be funded over the next few years, pursuant to Illinois law. Therefore, the Village must begin to take action now or it will be facing a loss of taxes down the road and an inability to afford its bills. Should the Village be unable to fund its pensions, it will have a significant adverse impact on the welfare of the public because the public will not be able to foot the pension bill. This is why the Village needed to begin to take action now through its proposed change to eliminate the education incentive for any new employees, except those with a master's degree. This will save the Village thousands of dollars annually and help the Village meet its pension obligations. ...

Potentially saving the Village “thousands of dollars annually” will do little to solve any pension problems facing the Village (or the many other public employers with similar problems).¹⁸³

The Village has a heavy burden to meet to achieve the kind of change it seeks here. That burden has not been met. The Union’s position that the *status quo* be maintained is adopted.

11. Health Insurance

The Village proposes three basic changes to the health insurance provisions of the predecessor Firefighter Agreement found in Article IX, which include: (1) the time frame for the healthcare committee to meet; (2) insurance opt-out for employees that are otherwise eligible for the Village insurance due to a family or marital relationship; and (3) new retirees’ insurance.¹⁸⁴

¹⁸³ Given the Illinois Supreme Court’s very recent decision in *Kanerva v. Weems*, No. 115811 (July 3, 2014) that health care benefits for retired state and university employees are protected by the Pension Clause of the Illinois Constitution and cannot be diminished or impaired, the parties’ ability to address pension issues through changing benefits may become more limited. *Kanerva* is reported at:

www.state.il.us/court/Opinions/SupremeCourt/2014/115811.pdf

¹⁸⁴ Village Amended Final Offer at 5-8; Village Brief at 127-130, 171-177.

The Union seeks to maintain the *status quo*.¹⁸⁵

With respect to the time frame for the healthcare committee to meet and the change in the open enrollment period, the Village argues:¹⁸⁶

... [T]he Village negotiated with all of its other bargaining units to change the time-frame for when the healthcare committee meets on an annual basis to the fall instead of setting it in September, because ... the Village's open enrollment period varies depending on when the Village receives the information from the health insurance providers. Additionally, since the committee always meets in the fall, rather than always in September, the Village looked at this as merely clean-up to reflect the status quo of the practice. The Village also negotiated a change in the language for open enrollment for insurance benefits from January to the fall, again, as clean-up to reflect the current Village practice of holding open enrollment at varying times, but usually in the fall. ... [B]oth of these proposals reflect the current practice, which has been accepted in the same language in the CBAs for all of the other Village bargaining units

The Union argues that the changes proposed by the Village concerning when the insurance committee meets and the change in the open enrollment period should be rejected because:¹⁸⁷

... [T]he start time for the Village's insurance year varies and has changed throughout the past few years. Moreover, the Village receives information from the insurance company approximately nine (9) months before the renewal period. Thus, the proposed change does nothing to enhance the Village's ability to review insurance proposals.

* * *

¹⁸⁵ Union Brief at 111. However, the Union states that "[w]ith regard to Article IX, Section 9.2, the Village wants to change the reference to AFSCME Council 31, Local 601 to IUOE, Local 150, and the Union has no objection to this change." Union Brief at 113. That will be considered as a tentative agreement and in accord with VIII *infra*, shall be incorporated into the new Agreements.

¹⁸⁶ *Id.* at 172.

¹⁸⁷ Union Brief at 113-114.

... Moreover, in light of the fact that the Village also wants to change open enrollment to the fall, this change makes no sense and is unnecessary. The purpose of the committee, as set forth in the Agreement, is to review and discuss the Village's health plans and advise the Village of the various costs and benefits associated with said plans. Further, based upon the discussions between the Village and the Health Insurance Committee, it is the objective of the Village to provide group employee benefit plans that are common to all Village employees, to the extent allowed under the provisions of the collective bargaining agreements. Thus, the role of the Health Insurance Committee is vital to the Village's ability to determine which group employee benefit plan to offer Village employees. If open enrollment is in the fall and the committee does not meet until the fall, then there is no time for the committee to serve its purpose. Thus, the proposed changes would render the committee virtually useless. As such, the proposal makes no sense and does not serve to fix a system that is broken. Indeed, the proposal would have the opposite effect.

With respect to insurance opt-out for current employees, the Village argues:¹⁸⁸

... [T]he Village negotiated a small change in the insurance opt-out for current employees with all of its other bargaining units and implemented the change for its non-bargaining unit employees as well. The Village negotiated a change to eliminate the insurance opt-out for employees that are otherwise eligible for the Village insurance due to a family or marital relationship. The reason for this change was to eliminate the double-dipping that several Village employees were getting (including some members of the Fire Department) that was not only not saving the Village any money, which was the purpose of the opt-out to begin with, but was costing the Village an additional \$1,500 to \$1,000 per employee because they would collect the opt-out while remaining on the Village insurance through a familial relationship. This change was adopted by all other Village bargaining units during the last round of negotiations and has been applied to all non-union Village employees. ...

¹⁸⁸ Village Brief at 172-173 [record citations omitted].

With respect to new retirees' insurance, the Village argues:¹⁸⁹

... [T]he Village negotiated two changes in retiree insurance for new retirees with all of the other Village bargaining units as well as applied the negotiated changes to the Village's non-bargaining unit employees. The first change that has been accepted by all of the other Village employees is that all new retirees will be required to contribute ten percent (10%) toward the insurance premium to continue insurance coverage under the basic Village insurance plan. The Village will continue to contribute the other ninety percent (90%) of the insurance premium for retirees. The Village determined that this change was necessary in order to save some of the millions of dollars that the Village was paying for retiree health insurance on an annual basis, which contributed to the Village's growing unfunded liability. The second change that the Village negotiated with all of the other Village bargaining units was to eliminate the retiree insurance buy-out, where the Village would pay the retiree the full value of the insurance premium to any retiree that opted-out of the Village insurance, for any retiree that was not currently receiving the opt-out because this was costing the Village thousands of dollars and was not, in fact, saving the Village any money. These two changes were accepted by all other Village bargaining units during the last round of negotiations and have taken effect for all Village employees, except for the employees covered by the Local 3405 CBAs. ...

With respect to insurance opt-out for current employees and new retirees insurance, the Union argues that the evidence shows that although the cost savings will increase with time, the cost savings for all other Village employees resulting from the Village's changes since early 2012 thus far have been minimal (\$2,500 to \$3,000 annually); cost savings in and of themselves are not reasons to change a *status quo*; there was no *quid pro quo* here; there is no internal parity within the Village for other bargaining units; and the Village's pro-

¹⁸⁹ *Id.* at 173-174.

posal for new retirees creates a two-tiered system which should not be imposed by an interest arbitrator [citing *Palos Heights Fire Protection District, supra*].¹⁹⁰

These are compelling arguments – from both sides. However – and not because of the merits of the Union’s arguments – the Union’s position that the *status quo* be maintained on insurance must be adopted.

In this economy, negotiating insurance changes is a most difficult task. There are too many unknowns – particularly because of the roller coaster rate of the recovering economy and the yet unknown full impact of the Affordable Care Act, either through implementation or ongoing legal and legislative challenges.

The answer to this issue flows from the fact that I have adopted the Village’s proposal on duration of the Firefighter Agreement, setting the Firefighter Agreement to expire December 31, 2014. See discussion *supra* at VI(A)(1). The Firefighter Agreement will be expiring in less than six months and the parties will soon be back at the bargaining table.

In *Village of Skokie, supra*, I was faced with a very similar set of circumstances – an employer proposal to change insurance coverage and a contract set to expire within a few months. In *Village of Skokie*, I adopted the union’s position to maintain the *status quo*, in part because (*id.* at 40):

... [G]iven that this Agreement expires April 30, 2014, the parties will soon be back at the bargaining table. Given the uncertainty of insurance at this time due to implementation of the Affordable Care Act and the recovering economy, the parties will be in a better position to discuss insurance on a going-forward basis rather than to have me change the *status quo* in a contract that is, for all purposes, expired.

¹⁹⁰ Union Brief at 115-118.

The contract in *Village of Skokie* had one month to run. Because I have adopted the Village's offer on duration, the Firefighter Agreement will have less than six months to run. That difference in time does not, in my opinion, dictate a result different from that found in *Village of Skokie*.

By the time the parties finalize language for this Agreement, they will be close to, or into, negotiations for the next Firefighter Agreement. This process is better served if the parties have the opportunity in the first instance to address conditions on the ground that may be changing rather than having me potentially ram through a significant change (if the Village's position is adopted on the merits) or establish a *status quo* which will be more difficult for the Village to change in the next round of negotiations (if the Union's position is adopted on the merits). The parties' substantive arguments on reasons for the changes sought are preserved. This issue should therefore be addressed in negotiations for the next Firefighter Agreement. For now – and only for the reasons discussed – the *status quo* on insurance shall be maintained and the Union's position is adopted.

B. The Officer Agreement

1. Common Issues With The Firefighter Agreement

Except as discussed in this section, many of the issues discussed *supra* at VI(A) are common to the Officer Agreement. To the extent there is overlap, the resolutions of issues in Firefighter Agreement are equally applicable to the Officer Agreement and are adopted as resolutions of those disputes for the Officer Agreement.

2. Retroactivity

Section 5.1(b) of Officer Agreement provides:

ARTICLE V
WAGES AND BENEFITS

* * *

Section 5.1 Salaries and Retroactivity

* * *

b. Retroactivity. Employees on the payroll at any time on and after January 1, 2007, shall receive full retroactive pay for base salary and overtime from January 1, 2007 or from the first day of service after January 1, 2007 for employees hired after January 1, 2007. Retroactivity shall be included in a separate payroll check to be issued by the Village as soon as practicable.

The Union seeks to change this language to read as follows:¹⁹¹

b. Retroactivity. Employees on the payroll at any time on and after January 1, ~~2007~~ **2012**, shall receive full retroactive pay ~~for base salary and overtime~~ from January 1, ~~2007~~ **2012** or from the first day of service in ~~2007~~ **2012** for employees hired after January 1, ~~2007~~ **2012**. Retroactivity shall apply to all aspects of pay. Retroactive pay shall be included paid in a separate payroll check to be issued by the Village as soon as practicable within a reasonable time not to exceed 45 days after execution of this Agreement by both parties.

The Village's position as stated in its brief is to "[r]eject Union changes except date changes."¹⁹²

However, the Village's Initial Final Offer for the Officer Agreement contained the following proposal which included the language "[u]pon ratification of this Agreement by both parties" [changes in bold]:¹⁹³

b. Retroactivity - Employees on the payroll at any time after January 1, **2012** shall receive full retroacting pay from

¹⁹¹ Union Final Offer (Officer Agreement) at 1; Union Brief at 25.

¹⁹² Village Brief at 8.

¹⁹³ Union Exh. 7 at Tab 6.

January 1, 2012 or from the first day of service in **2012** for employees hired after January 1, **2012**. **Upon ratification of this Agreement by both parties**, retroactivity shall be included in a separate check to be issued by the Village as soon as practicable.

In the Village's Amended Final Offer, there is one specific section concerning retroactivity which is directed towards the Firefighter Agreement – the same language discussed *supra* at VI(A)(3):¹⁹⁴

b. Retroactivity - Employees on the payroll any time after January 1, 2011 shall receive full retroactive pay from ~~January 1, 2012~~ January 1, 2012 or from the first day of service in 2012 for employees hired after January 1, 2012. ~~Retroactivity shall apply to all aspects of pay. Upon ratification of this Agreement by both parties, retroactive pay shall be paid included in a separate check within a reasonable time not to exceed 45 days after execution of this Agreement by both parties to be issued by the Village as soon as practicable~~

The retroactivity provisions of the Officer Agreement read slightly different from the retroactivity provisions of the Firefighter Agreement. As discussed *supra* at VI(A)(3), with the changes made to reflect the effective date of the Firefighter Agreement (the position of the Union which was adopted on that issue), the Firefighter Agreement's retroactivity language now reads:

b. Retroactivity. Employees on the payroll at any time on and after January 1, 2012, shall receive full retroactive pay from January 1, 2012 or from the first day of service after January 1, 2012 for employees hired after January 1, 2012. Retroactivity shall apply to all aspects of pay. Retroactive pay shall be paid in a separate payroll check within a reasonable time not to exceed 45 days after execution of this Agreement by both parties.

¹⁹⁴ Village Amended Final Offer at 8.

The Union's offer for the Officer Agreement makes the retroactivity language consistent with the retroactivity language in the Firefighter Agreement thereby constituting an internal comparable. Moreover, although stating in its brief that its position for the Officer Agreement was to "[r]eject Union changes except date changes"¹⁹⁵, the Village's formal offers contained the language requiring the condition of "[u]pon ratification of this Agreement by both parties ...", which, as discussed *supra* at VI(A)(3) cannot happen for the Union in an interest arbitration proceeding.

This is an economic provision. Therefore, here I can only pick one party's offer. In reality, it appears that the parties are not trying to make substantive changes. The Union takes the position that it is merely changing dates to correspond with the term of the Officer Agreement and to make the two Agreements internally consistent. The Village sees all of this as "clean up" efforts.¹⁹⁶ For sake of internal consistency and to avoid any confusion over whether there is a condition which is not permitted by (ratification by the Union as found in the Village's offers) and because I can pick only one offer, the Union's offer on retroactivity for the Officer Agreement is adopted.¹⁹⁷

¹⁹⁵ Village Brief at 8.

¹⁹⁶ Although to a lesser degree on a less important issue, this is the situation which arose in Arbitrator Goldstein's award in *Rockford*, *supra* (see discussion *supra* at VI(A)(4)), concerning manning where *both* parties sought to change the *status quo*.

¹⁹⁷ There is one minor difference now between the Union's two retroactivity offers which I have adopted. The Union's language which was adopted for the Firefighter Agreement reads, in pertinent part "[e]mployees on the payroll at any time on and after January 1, 2012, shall receive full retroactive pay from January 1, 2012 or from the first day of service *after* January 1, 2012 for employees hired after January 1, 2012" [emphasis added]. However, the Union's proposed language which I have adopted for the Officer Agreement reads "[e]mployees on the payroll at any time on and after January 1, 2012, shall receive full retroactive pay from January 1, 2012 or from the first day of service *in* 2012 for employees hired after January 1, 2012" [emphasis added]. That looks like a typographical error at worst with the phrase in the Officer Agreement "... from the first day of service *in* 2012" which should read like the Firefighter Agreement "... from the first day of service *after* January 1, 2012 (as opposed to the Village's

[footnote continued]

3. Longevity

Appendix G of the predecessor Officer Agreement is the salary schedule for the Officer Agreement. Like Appendix A of the Firefighter Agreement, Appendix G of the Officer Agreement provided for longevity step increases. However, unlike the Firefighter Agreement which had longevity established at a fixed percentage between steps after five years (1%) and fixed dollar amounts prior to five years, the Officer Agreement did not contain percentage increases for longevity but had flat dollar amounts throughout all steps.¹⁹⁸

The Union seeks to establish a 1% longevity increase over the prior step increase for steps after 10 years and beyond.¹⁹⁹

The Village seeks to maintain the *status quo*.²⁰⁰

The Union's rationale for the 1% versus flat rate longevity payment is that the 1% after five years was added to the predecessor Firefighter Agreement "... so that the parties did not have to continually negotiate over the longevity increase" and was an issue agreed to in the predecessor Firefighter Agreement during a five month lapse between the signing of the predecessor Officer Agreement and the predecessor Firefighter Agreement and this is the first opportunity for the Union to advance what it sees as keeping parity with the Fire-

[continuation of footnote]

ratification provision by the Union which cannot happen in an interest arbitration). Technically, any employees hired "after" 2012 could not be working "in" 2012. I trust that if this is an issue, the parties will handle that on the remand for drafting of language. See *infra* at IX. If it is not an issue – i.e., because no employees went into the Officer bargaining unit after 2012, but the parties cannot agree, the difference can be brought back to me for resolution or the language can remain as adopted with the "after January 1, 2012" and "in" difference.

¹⁹⁸ Compare Appendix A of the Firefighter Agreement with Appendix G of the Officer Agreement.

¹⁹⁹ Union Final Offer (Officer Agreement) at 2, Appendix G (Union Exh. 7 at Tab 5); Union Brief at 121-125.

²⁰⁰ Village Brief at 183-184.

fighter Agreement.²⁰¹ The Union argues that the result of establishing a fixed 1% step differential after 10 years yields a result that "... is minimal, and in some instances it is to the benefit of the Village, whereas in other instances it is to the benefit of the Union."²⁰²

The Union also argues that if a percentage is not established, there could be a compression of increases in the Officer Agreement and, depending on what future increases are negotiated in the Firefighter Agreement, the Firefighter wages could get closer to the Officer wages.

The Village argues that the present longevity system is not broken; the difference between the longevity steps in the Officer Agreement is 1% even though at a flat rate and "... [t]he Union's proposal is to sneak an additional one percent to the longevity scale for the Officer's CBA."²⁰³

As with the Firefighter wage increases discussed *supra* at VI(A)(2), it is necessary to look at the actual impact of the parties' offers. Because the Village's wage offer of 3.5%, 2.5% and 2.5% has been selected (*see* discussion *supra* at VI(A)(2)), those are the numbers that will be used for the longevity comparisons. The results are as follows:

²⁰¹ Union Brief at 124.

²⁰² *Id.*

²⁰³ Village Brief at 183-184.

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TABLE 16

Village Offer - Officer Agreement (Monthly) With Adopted Village Wage Offer

<u>Rank</u>	<u>Step</u>	<u>12/31/11 (End of Last Con- tract)</u>	<u>1/1/12 (3.5%)</u>	<u>1/1/13 (2.5%)</u>	<u>1/1/14 (2.5%)</u>	<u>Dif.</u>	<u>Actual % Inc.</u>
Fire Captain	5 yrs	7,870	8,145	8,349	8,558	688	8.74%
	10 yrs.	7,950	8,228	8,434	8,645	695	8.74%
	15 yrs.	8,030	8,311	8,519	8,732	702	8.74%
	20 yrs.	8,110	8,394	8,604	8,819	709	8.74%
	25 yrs.	8,190	8,477	8,689	8,906	716	8.74%
Bureau Chief	5 yrs	8,174	8,460	8,672	8,888	714	8.74%
	10 yrs.	8,254	8,543	8,756	8,975	721	8.74%
	15 yrs.	8,334	8,626	8,841	9,062	728	8.74%
	20 yrs.	8,414	8,708	8,926	9,149	735	8.74%
	25 yrs.	8,494	8,791	9,011	9,236	742	8.74%
Battalion Chief	5 yrs	8,477	8,774	8,993	9,218	741	8.74%
Assistant Chief	10 yrs.	8,557	8,856	9,078	9,305	748	8.74%
	15 yrs.	8,637	8,939	9,163	9,392	755	8.74%
	20 yrs.	8,717	9,022	9,248	9,479	762	8.74%
	25 yrs.	8,797	9,105	9,333	9,566	769	8.74%

TABLE 17

Union Offer - Officer Agreement (Monthly) With Adopted Village Wage Offer And With 1% Longevity Between Steps

<u>Rank</u>	<u>Step</u>	<u>12/31/11 (End of Last Contract)</u>	<u>1/1/12 (3.5%)</u>	<u>1/1/13 (2.5%)</u>	<u>1/1/14 (2.5%)</u>	<u>Actual Dif.</u>	<u>Actual % Inc.</u>
Fire Captain	5 yrs	7,870	8,145	8,349	8,558	688	8.74%
	10 yrs.	7,950	8,227	8,433	8,643	693	8.72%
	15 yrs.	8,030	8,309	8,517	8,730	700	8.72%
	20 yrs.	8,110	8,392	8,602	8,817	707	8.72%
	25 yrs.	8,190	8,476	8,688	8,905	715	8.73%
Bureau Chief	5 yrs	8,174	8,460	8,672	8,888	714	8.74%
	10 yrs.	8,254	8,545	8,758	8,977	723	8.76%
	15 yrs.	8,334	8,630	8,846	9,067	733	8.79%
	20 yrs.	8,414	8,716	8,934	9,158	744	8.84%
	25 yrs.	8,494	8,804	9,024	9,249	755	8.89%
Battalion Chief	5 yrs	8,477	8,774	8,993	9,218	741	8.74%
Assistant Chief	10 yrs.	8,557	8,861	9,083	9,310	753	8.80%
	15 yrs.	8,637	8,950	9,174	9,403	766	8.87%
	20 yrs.	8,717	9,040	9,266	9,497	780	8.95%
	25 yrs.	8,797	9,130	9,358	9,592	795	9.04%

A head-to-head comparison of the offers for this Agreement shows the following:

TABLE 18
Comparison Of Officers Longevity Offers (Monthly)

<u>Rank</u>	<u>Step</u>	<u>12/31/11 (End of Last Con- tract)</u>	<u>Actual Dif.</u>	<u>Actual % Inc.</u>	<u>Union Dif. (With 1% Step)</u>	<u>Union % Inc.</u>	<u>Total % Dif.</u>
Fire Captain	5 yrs	7,870	688	8.74%	688	8.74%	--
	10 yrs.	7,950	695	8.74%	693	8.72%	-0.02%
	15 yrs.	8,030	702	8.74%	700	8.72%	-0.02%
	20 yrs.	8,110	709	8.74%	707	8.72%	-0.02%
	25 yrs.	8,190	716	8.74%	715	8.73%	-0.01%
Bureau Chief	5 yrs	8,174	714	8.74%	714	8.74%	--
	10 yrs.	8,254	721	8.74%	723	8.76%	0.02%
	15 yrs.	8,334	728	8.74%	733	8.79%	0.05%
	20 yrs.	8,414	735	8.74%	744	8.84%	0.10%
	25 yrs.	8,494	742	8.74%	755	8.89%	0.15%
Battalion Chief	5 yrs	8,477	741	8.74%	741	8.74%	--
Assistant Chief	10 yrs.	8,557	748	8.74%	753	8.80%	0.06%
	15 yrs.	8,637	755	8.74%	766	8.87%	0.13%
	20 yrs.	8,717	762	8.74%	780	8.95%	0.21%
	25 yrs.	8,797	769	8.74%	795	9.04%	0.30%

The Union is therefore correct that the 1% step differential it seeks produces a lesser wage increase in the lower ranks in the Officer Agreement (captain). And, with the exception of the higher years in the higher ranks (battalion chief, assistant chief), the Union's proposal appears to be "minimal" and, in any event not, as the Village argues, an attempt "... to sneak an additional one percent to the longevity scale for the Officer's CBA."²⁰⁴

²⁰⁴ Union Brief at 124; Village Brief at 183-184.

The Union's strongest argument is the compression argument. As the years go by, without an established percentage between steps, the differences in salaries compress and, in theory, the differential between firefighters and officers will decrease. That position will be particularly evident if there are higher percentage increases negotiated (or imposed through interest arbitration) in the Firefighter Agreement than in the Officer Agreement. If anything, that potential produces a morale issue for the officers as the typical "rank and file" pay in the firefighter unit inches towards those who supervise them in the officer unit.

However, at least for this Officer Agreement, the fact that the Union's offer produces a mostly "minimal" difference (which actually benefits both parties depending on the rank and step of the officer) shows that the present step and longevity structure is not broken. And at best, the Union's offer to keep a distance in terms of pay so as not to create a compression situation with a hypothetical morale problem caused by the pay of the two units growing closer is really only a "good idea" – perhaps a very good idea. Again, as described throughout this award, a "good idea" is not enough to justify a change to the *status quo*. The potential morale issue brought about by a hypothetical compression also does not show the system is presently broken and in need of repair.

On balance, the Union's other arguments such as giving the parties the opportunity to achieve parity in the two units do not change the result. The members of the Officer Agreement are paid well and the other monetary benefits maintained by this award continues that position.

The Village's position to maintain the *status quo* on longevity is adopted.

4. Extra Duties and Responsibilities

The Union seeks to add the following language to Article VI:²⁰⁵

Section 6.6 Extra Duties and Responsibilities. Due to the extra duties now being performed in the areas of Apparatus Maintenance, Radios & Communications, Station Maintenance, Box Cards, SOGs and Mutual Aid Agreements, all employees covered by this Agreement shall accrue an additional twelve (12) hours of compensatory time per month.

The Village opposes adding that language and seeks to maintain the *status quo*.²⁰⁶

The Union's position is premised upon the argument that during the course of the predecessor Officer Agreement assignments of certain non-bargaining unit duties were shifted into the bargaining unit and this is the first opportunity for the Union to seek compensation for the performance of those duties by officers.²⁰⁷ The Union also draws upon the Village's contract for Police Supervisors who get an additional 12 hours of compensatory pay per month arguing that benefit as an internal comparable.²⁰⁸

The Village disputes the Union's position, arguing that the bargaining unit members have long been performing the duties and the duties are not performed on a daily basis and do not take long periods of time to perform.²⁰⁹ The Village also asserts that the Union's proposal constitutes a breakthrough.²¹⁰

²⁰⁵ Union Final Offer (Officer Agreement) at 2; Union Brief at 125-131.

²⁰⁶ Village Brief at 8, 134, 184-186.

²⁰⁷ Union Brief at 126-128.

²⁰⁸ *Id.* at 130.

²⁰⁹ Village Brief at 184-185.

²¹⁰ *Id.* at 185.

The Village is correct that the Union's proposal to compensate bargaining unit employees for the disputed duties is a breakthrough and for reasons discussed throughout this award, this is not the type of issue which requires the fixing of a broken system. The short answer to the Union's position is that this is another dispute which should be handled under the grievance procedure – here, under the Officer Agreement. This is a classic grievance wherein a union argues that duties have been improperly assigned to the bargaining unit.²¹¹

The Village's position to maintain the *status quo* is adopted.

VII. CONCLUSION

In sum the issues in this matter are resolved as follows:

A. FIREFIGHTER AGREEMENT

1. Duration

Village position: three years (January 1, 2012 to December 31, 2014).

2. Salaries

Village offer:

Effective	Increase
January 1, 2012	3.5%
January 1, 2013	2.5%
January 1, 2014	2.5%
Total	8.5%

3. Retroactivity

Union position: language *status quo* with change only to reflect effective date of the Agreement (January 1, 2012).

²¹¹ I obviously express no opinion on the merits of such a grievance.

4. Minimum Manning

Union position: *status quo*.

5. Wellness Fitness Initiative

Union position: *status quo*: implement concept of WFI into Agreement.

6. Paid Time Off

Remanded to parties to draft language to make paid time off consistent with WFI implementation. Jurisdiction retained for disputes.

7. IRC 457 Plan

Status quo maintained (whatever that is). This is a dispute for a grievance arbitrator to determine if there was a violation of Section 7.17 of the predecessor Firefighter Agreement and not presently a dispute for an interest arbitrator to decide. The Union may bring the issue of whether the Village reneged on its agreement to adopt the AIG IRC 457 Plan to a grievance arbitrator for determination.

8. Company Inspections

Village position: *status quo* with no additional compensation language for company fire inspections.

9. Sick Leave Payout Upon Retirement Language

Village position: remove language because, as written, no present or future employee will be eligible to receive the benefit.

10. Education And Training

Union position: *status quo* - no two tiered benefit.

11. Health Insurance

Union position: *status quo* (parties to address in the upcoming negotiations for the next Firefighter Agreement).

B. OFFICER AGREEMENT

1. Common Issues With Firefighter Agreement

To the extent there is overlap, the resolutions of issues in Firefighter Agreement are equally applicable to the Officer Agreement.

2. Retroactivity

Union position: same language as Firefighter Agreement.

3. Longevity

Village position: *status quo*.

4. Extra Duties and Responsibilities

Village position: *status quo* with no additional compensation language for alleged extra duties.

VIII. TENTATIVE AGREEMENTS

During the course of negotiations and during the hearing process, the parties reached a number of tentative agreements. Those tentative agreements are incorporated into this award, with economic provisions retroactive to the appropriate dates.

IX. DRAFTING OF LANGUAGE AND RETENTION OF JURISDICTION

This matter is now remanded to the parties for drafting of language consistent with the terms of this award and tentative agreements reached by the parties on other issues. I will retain jurisdiction to resolve disputes which may arise concerning that language.

Further, I will retain jurisdiction for any other disputes agreed to by the parties for submission.

A handwritten signature in black ink, appearing to read "Edwin H. Benn", written over a horizontal line.

Edwin H. Benn
Arbitrator

Dated: July 7, 2014

APPENDIX

**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

THE VILLAGE OF OAK LAWN

and

**OAK LAWN PROFESSIONAL
FIREFIGHTERS ASSOCIATION,
LOCAL 3405, IAFF**

CASE NOS.: S-MA-13-033
Arb. Ref. 12.263
(Interest Arbitration)

ORDER

Presently before me is the Village's motion to amend its final offer and the Union's opposition to that motion. For reasons discussed below, the Village's motion is granted.

1. This is an interest arbitration under the Illinois Public Labor Relations Act, 5 ILCS 315, *et seq.* ("Act") for two contracts covering two bargaining units represented by the Union (one for the ranks of firefighter, engineer and lieutenant and the other for the ranks of battalion chief, captain and bureau chief). Hearing commenced on January 23, 2013. The next scheduled hearing date is June 27, 2013.

2. According to the Union, the predecessor Agreements expired December 31, 2010, but rolled over for another year because neither party reopened negotiations, thereby extending the Agreements to December 31,

2011.¹ Further, according to the Union, negotiations commenced for successor Agreements, without success, which resulted in the invocation of this interest arbitration process.²

3. The parties agreed to exchange last best final offers, which was done on January 14, 2013.

4. At the hearing on January 23, 2013, the Union moved for the granting of its final wage proposals and term of agreement for both Agreements.³ The basis for the Union's motion included the position that the Village's final offer proposed retroactive wage increases to July 1, 2011 and the Act and the governing rules preclude an interest arbitrator from granting the Village's wage proposals which would, in effect, amount to granting a wage increase for Agreements which were still in effect (because the predecessor Agreements rolled over to December 31, 2011).⁴ A briefing schedule was established on the question of whether I had the authority to grant a wage increase retroactive to July 1, 2011.

5. On April 3, 2013, the Village moved to amend its last final offer. The Union opposed that motion on grounds that the parties agreed to exchange last best final offers before the interest arbitration began and that agreement should be honored.⁵ Further, according to the Union, "... many of the proposals which the Village seeks to modify are neither permissive, nor mandatory, but unlawful."⁶

¹ Tr. 4-5.

² Tr. 7.

³ Tr. 4.

⁴ Tr. 8-9.

⁵ Union Opposition at 1.

⁶ Union Opposition at 2.

6. The parties agreed to exchange last best final offers and did so prior to the commencement of the hearing and, understandably, the Union seeks to keep the Village to its agreement. The Union prepared for the hearing based upon the Village's previously exchanged final offer and, aside from the fact that if the Village's motion to amend its final offer is denied I would then have to select the Union's final offer, it makes sense that the Union would object to any changes to that final offer.

However, Section 14(g) of the Act provides:

(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. ...

Therefore, under the Act, the ultimate call on setting the parameters for submission of final offers is mine.⁷ And pursuant to Section 14(g), I have the authority to do so "[a]t or before the conclusion of the hearing" The hearing has not yet concluded. I therefore have the authority to allow the Village to amend its final offer. The question is whether I should exercise that authority.

I express no opinion at this time on the Union's position that some of the Village's proposals are "... neither permissive, nor mandatory, but unlawful". I do note that as part of its amended final offer, the Village's wage offer now takes effect January 1, 2012 rather than in 2011.⁸ But if the Union is correct that "... many of the proposals which the Village seeks to modify are neither permissive, nor mandatory, but unlawful", then my refusal to allow the Village

⁷ The parties waived the tri-partite panel. Tr. 3.

⁸ Village Amended Final Offer (last page).

to, in effect, attempt to “correct” those proposals would only serve to force the Village to take what may be “unlawful” positions. That is not my role in these cases. My role is to get the parties to make final offers, present their evidence and arguments and issue an award using the factors in Section 14(h) of the Act. I do not believe that forcing a party into taking a position that allows another party to claim the position is unlawful serves my function to end this dispute and issue an award setting the terms and conditions for the parties’ successor Agreements.

The Village shall therefore be allowed to amend its last best final offer as contained in the April 3, 2013 motion. No further amendments will be allowed.

7. However, nothing in this Order shall be taken to prevent the Union from seeking redress in another forum for what it believes to be unlawful or improper offers made by the Village.⁹

8. Further, because of the Village’s actions to amend its final offer and the Union’s preparation based on the Village’s previous final offer, the Union shall have until June 3, 2013, (or to a different date for cause shown) to also amend its final offer.

9. In light of this ruling and because the Village’s wage offer now takes effect January 1, 2012 (and not in 2011), it appears that the previously established briefing schedule over my authority to grant a wage increase in 2011 is no longer necessary. If either party believes that issue still needs to be addressed, then it shall so advise.

⁹ I note the Union has already taken that course on one of the Village’s offers made during negotiations. See Union Opposition at 2, note 3 discussing a charge filed with the Illinois Labor Relations Board in Case No. S-CA-13-119.

Village of Oak Lawn and IAFF Local 3405
Order
Page 5

10. This matter shall now proceed for further hearing as scheduled on June 27, 2013.

A handwritten signature in black ink, appearing to read "Edwin H. Benn", is written over a horizontal line.

Edwin H. Benn
Arbitrator

Dated: April 30, 2013

**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

THE VILLAGE OF OAK LAWN

and

**OAK LAWN PROFESSIONAL
FIREFIGHTERS ASSOCIATION,
LOCAL 3405, IAFF**

CASE NOS.: S-MA-13-033
Arb. Ref. 12.263
(Interest Arbitration –
Firefighter and Officer
Agreements)

SUPPLEMENTAL OPINION AND AWARD

APPEARANCES:

For the Village: Paul A. O'Grady, Esq.
Melissa D. Sobota, Esq.

For the Union: Lisa B. Moss, Esq.

Dated: January 26, 2015

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I. BACKGROUND

By Opinion and Award dated July 7, 2014 (“*Award*”), issues in dispute between the parties for their January 1, 2012 to December 31, 2014 Firefighter and Officer Agreements were resolved by me through an interest arbitration proceeding pursuant to Section 14 of the Illinois Public Labor Relations Act (“IPLRA”).

One of the disputed issues between the parties was the Wellness Fitness Initiative (“WFI”). The Union sought language implementing WFI. The Village initially made a WFI proposal in its Initial Final Offer, but after I allowed the Village to amend that offer (over the Union’s objection), the Village’s Amended Final Offer contained no language addressing WFI as the Village withdrew its initial final offer on WFI.¹

The WFI issue was resolved in the *Award* by my finding that “... the parties implemented *the concept* of WFI making it the *status quo* as of December 31, 2011 when the prior ... Agreement[s] and ... [their] roll-over provisions expired”; the Village had not demonstrated that the *status quo* was broken and therefore in need of change; and that “[t]he Union’s offer to codify WFI is therefore adopted.”²

However, although the “concept of WFI” was the *status quo* and was adopted, “[l]anguage addressing WFI was not part of the prior ... Agreement[s]”³ Because the *Award* required WFI to be codified into the Agreements,

¹ *Award* at 67.

² *Id.* at 66-73 [emphasis in original].

³ *Id.* at 68.

“[w]ith WFI in place, the next question is how to implement the mechanics?”⁴
The *Award* answered that question by remanding the issue to the parties for drafting of language, with my retention of jurisdiction for disputes over that language.⁵

At this point, I have imposed WFI as requested by the Union. Although the task of putting together language to accomplish that result may well have substantive implications on benefits, I view the task primarily as one of drafting language to implement WFI. WFI is now going to be in the ... Agreement[s] as requested by the Union. The question now is the language which must be constructed to implement WFI. As I have done in other interest arbitration awards and as I am doing here ..., this drafting of implementation language must be undertaken by the parties in the first instance to attempt to come up with language – language which, like other drafting tasks, may have substantive implications on benefit levels. But the point here is to allow the parties in the first instance to come up with language that has the primary goal ... to serve as an incentive for WFI. ... [B]ecause I am retaining jurisdiction over language drafting issues, if the parties cannot agree upon implementing language for WFI, I will impose that language based on one of the parties' positions.

In the *Award*, I further found:⁶

This matter is now remanded to the parties for drafting of language consistent with the terms of this award and tentative agreements reached by the parties on other issues. I will retain jurisdiction to resolve disputes which may arise concerning that language.

Because of the “substantive implications on benefit levels” that the ultimate WFI language was going to have, I determined in the *Award* that if the

⁴ *Id.* at 71.

⁵ *Id.* at 72-73.

⁶ *Id.* at 106-107.

parties could not agree upon the language for WFI and its implementation, then I would treat any dispute between them on the language as a typical economic dispute in an interest arbitration under the IPLRA – *i.e.*, one of the parties' final offers would be adopted on the economic issue. Again, as I found in the *Award* "... if the parties cannot agree upon implementing language for WFI, I will impose that language *based on one of the parties' positions.*"⁷

Following issuance of the *Award*, the parties exchanged proposals on language for implementation of WFI, but could not agree. On January 7, 2015, I was advised of the existence of the dispute between the parties concerning the language for WFI and, by agreement of the parties, that dispute was returned to me for resolution. Argument was then held on January 14, 2015.

II. THE PARTIES' LANGUAGE PROPOSALS

The material portions of the parties' language proposals are as follows [Union language in plain text; Village proposal with stricken language, italics or underscored]:⁸

A. The Officer Agreement

Section 5.7. ~~Paid Time Off.~~ ~~The number of days which can be earned shall be unlimited. Shift and day employees shall accumulate paid time off (PTO) (formerly sick time and compassionate leave) at a rate of seven (7) shifts and/or days per year, whichever is applicable, starting on January 1st of each year.~~

⁷ *Id.* at 73 [emphasis added].

Section 14(g) of the IPLRA provides that "... [a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement"

⁸ According to the parties' submissions on the language, and because there are two contracts involved in this case, the paragraph numbering for the provisions differ depending on the Agreement and as explained, the incentive proposed by the Village under the two Agreements differs.

~~PTO is a benefit earned by employees in case they or their family members (defined as wife, children, grandchildren, including step children/grandchildren, parents, including in-laws who reside with the employee, and any person for whom the employee is considered the primary caregiver or guardian) become sick or disabled and to meet medical and dental appointments and other preventative measures. PTO is not a privilege. Any employee claiming PTO under false pretenses is cause for discipline, pursuant to the terms of this Agreement, up to and including termination.~~

~~Employees (or their family members) who are ill or injured and unable to report to work must promptly notify their supervisor prior to the beginning of their regular work day.~~

~~PTO shall be used in no less than one (1) hour increments. On the fourth (4th) day of absence (and every day thereafter) in a calendar year, a doctor's certificate, paid for by the employee, regarding illness and fitness to return to work shall be required within 72 hours of returning to active duty. PTO is prohibited for the purposes of outside employment. Abuse of PTO may result in discipline, pursuant to the terms of this Agreement, up to and including termination.~~

~~Once an employee exhausts his/her PTO bank, the employee must return to work. If the employee does not return to work upon exhaustion of the employee's PTO bank, accumulated vacation leave, FMLA, and up to ten (10) duty trades, he or she will be considered to have abandoned the position and appropriate disciplinary action will be pursued up to and including termination of employment, unless the employee chooses to apply for either a disability pension or light duty assignment as provided for in Section 5.15 of this Agreement.~~

~~An employee's accumulated sick leave balance, as of December 31, 2014, shall be transferred to the employee's new PTO bank.~~

Leave as Status Quo

The number of days which can be earned shall be unlimited. Shift employees shall accumulate sick leave at a rate of twenty-four (24) hours per month of employment. Day personnel shall accumulate sick leave at a rate of eight (8) hours per month of employment. Shift employees using twenty-four (24) hours of sick leave or less in a calendar year and partici-

pating in the IAFF/IAFC Wellness & Fitness Initiative ("WFI") as outlined in Section 5.15(b) shall receive a stipend of \$250.00. Day employees using three (3) days of sick leave or less in a calendar year shall receive a stipend of \$250.00.

Employees who are laid off by the Village and whose employment is reinstated within eighteen (18) months of termination of employment shall have their sick leave accumulation restored at the level which existed at termination.

Section 5.8. Paid Time Off Incentive Payout. ~~Employees using the following number of PTO hours in a calendar year (Jan. 1st – Dec. 31st) shall receive the following incentive paid out by the first pay period of February of the following year, provided the following prerequisites are met: a minimum PTO balance of 720 hours and a participation rate of 75% in the wellness/fitness program as provided for in Section 5.16 of this Agreement. Paid Time Off Incentive shall also be paid upon retirement.~~

<u>PTO Leave Used</u>	<u>Days eligible for Sellback</u>
0	7 days (168 hours)
1	6 days (144 hours)
2	5 days (120 hours)
3	4 days (96 hours)
4 or more	0 days (0 hours)

~~An employee shall have the following options for payment of the Paid Time Off incentive:~~

- ~~1. Compensation in the form of a separate check;~~
- ~~2. The funds transferred to the employee's deferred compensation plan; or~~
- ~~3. The funds placed in a PEHP, VEBA and/or HSA account if the parties mutually agree to establish any such accounts in the future.~~

~~Any remaining PTO hours not sold back to the Village shall be placed in the employee's PTO bank.~~

~~* * *~~

Section 5.15. Annual Medical Exams/Wellness Fitness Initiative.

a. The Village shall continue to cover the cost of the Oak Lawn Fire Department yearly medical exam. The ex-

am shall consist of the same criteria as the IAFF/IAFC Wellness Fitness Initiative (WFI). Such exams shall include, but not be limited to, auditory, blood work, cardiac testing, spirometry, physical, TB testing, Hepatitis B testing and inoculations. The initial implementation cost increase, if any, between the Oak Lawn Fire Department yearly medical exam and the medical exam conducted pursuant to the WFI, shall be split equally between the parties.

b. The WFI shall be implemented to encourage and promote healthier employees and to reduce sick leave use and the frequency and severity of injuries within the ranks of the Oak Lawn Fire Department. Participation in this program shall be mandatory. Employees must maintain a minimum compliance of 75%. The parties acknowledge that the call volume may prohibit an employee from participating in the program on any given duty day. Station officers shall document their crew's participation in the firehouse software. ~~The incentive for the employee, besides the obvious increase in an employee's overall health and fitness, shall be the ability to sell back a portion of unused accumulated paid time off as follows:~~

~~In order to participate in this program, the employee must maintain a minimum compliance of 75%. The parties acknowledge that call volume or other factors may prohibit an employee from participating in the program on any given duty day. Station Officers shall document their crew's participation in the firehouse software. Employees must also have a minimum PTO balance equivalent to 720 hours. An employee who meets the foregoing two requirements is eligible to sell back to the Village up to seven (7) paid days off a year (currently sick and compassionate leave) as provided for in Section 5.8 of this Agreement.~~

Section 5.15. Compassionate Leave. *Disability or serious illness, attested to by a medical physician in writing, in the immediate family of an employee shall entitle such employee to two (2) compassionate leave days annually. The compassionate leave days shall be charged to accumulated sick leave. The physician's letter must be received by the Fire Chief or designee by the employee's next workday.*

B. The Firefighter Agreement

The parties' proposals for language in the Firefighter Agreement are essentially the same as in the Officer Agreement, with the exception of the WFI incentive in the Village's proposal (Section 5.7):

* * *

Employees using the following number of sick leave hours and participating in the IAFF/IAFC Wellness & Fitness Initiative ("WFI") as outlined in Section 5.16(b) shall receive a stipend as follows:

*0 Hours and 80% participation rate in the WFI:
\$1,000.00*

*24 Hours and 75% participation rate in the WFI:
\$500.00*

III. DISCUSSION

The *Award* adopted "... the concept of WFI" because that was the *status quo* which was not shown by the Village to be broken and in need of change.⁹ The *Award* further directed the parties to draft "... language that has the primary goal ... to serve as an incentive for WFI."¹⁰

The Village's proposed language must be rejected and the Union's proposed language adopted.

First, the Village's proposal does not "... serve as an incentive for WFI" as required by the *Award*.

In the predecessor Agreements, employees received the monetary stipend benefits offered by the Village in its proposed language, *without* conditions other than use of sick leave below specified levels.

⁹ *Award* at 70-71.

¹⁰ *Id.* at 72.

Section 5.7 of the 2007-2011 Firefighter Agreement provided:¹¹

Section 5.7. Sick Leave.

* * *

Employees using the following number of sick leave hours in a calendar year shall receive a stipend as follows:

0 hours = \$1,000

24 hours = \$500

Although providing for a lesser stipend, Section 5.7 of the 2007-2011 Officer Agreement similarly provided for payment of a stipend to employees using less than specified sick leave levels without further conditions:¹²

Section 5.7. Sick Leave.

... Shift Employees using twenty-four (24) hours of sick leave or less in a calendar year shall receive a stipend of \$250.00. Day employees using three (3) days of sick leave or less in a calendar year shall receive a stipend of \$250.00.

The Village's proposed language for WFI now uses WFI to effectively place a new condition on receipt of those previously existing stipends [added conditions emphasized]:

[Firefighter Agreement]

Employees using the following number of sick leave hours *and participating in the IAFF/IAFC Wellness & Fitness Initiative ("WFI") as outlined in Section 5.16(b)* shall receive a stipend as follows:

0 Hours *and 80% participation rate in the WFI:*
\$1,000.00

24 Hours *and 75% participation rate in the WFI:*
\$500.00

¹¹ Village Exh. 5.

¹² Union Exh. 7, Tab 1.

[Officer Agreement]

Shift employees using twenty-four (24) hours of sick leave or less in a calendar year *and participating in the IAFF/IAFC Wellness & Fitness Initiative (“WFI”) as outlined in Section 5.15(b)* shall receive a stipend of \$250.00. Day employees using three (3) days of sick leave or less in a calendar year shall receive a stipend of \$250.00.

And the Village’s proposed language in Section 5.16(b) of the Firefighter Agreement and Section 5.15(b) of the Officer Agreement details the added condition that has to be met by the employees that they previously did not have to meet in order to receive the stipends:

... Employees must maintain a minimum compliance of 75%. The parties acknowledge that the call volume may prohibit an employee from participating in the program on any given duty day. Station officers shall document their crew’s participation in the firehouse software.

By now requiring participation in WFI at the specified levels in order to receive the previously existing stipends which the Village seeks to maintain actually *diminishes* the sick leave benefit which existed in predecessor Agreements as the Village seeks to carry over those stipends to the Agreements in this case. The Village’s proposed language does not “... serve as an incentive for WFI” as required by the *Award* but does the opposite and is, for all purposes, an encumbrance up the employees’ ability to receive the stipends the Village seeks to maintain. In the predecessor Agreements, in order to receive the stipends the employees only had to keep sick leave usage below specified levels. Under the Village’s proposed language, in order to receive those same stipends not only do the employees have to keep sick leave usage below the specified levels but they now have to also maintain minimum compliance with WFI. That proposal does not “... serve as an incentive for WFI” as required by the

Award, but makes it *harder* for the employees to receive a benefit the employees already had.

Second, the financial impact of the stipends the Village seeks to maintain are minimal and do not “... serve as an incentive for WFI” as required by the *Award*.

As the Village points out, the Union’s proposed language “monetizes” leave provisions of the Agreements. To the extent that employees successfully meet the requirements of WFI, that is an accurate description because, under the Union’s proposed language, employees (if they choose to do so) can sell back paid time off at different levels (four to seven days) depending upon how much PTO they do not use. However, the Village’s proposal has the same overall effect by making previously existing stipend payments (\$250, \$500, or \$1,000) to employees who do not use established hourly cutoffs of sick leave.

Under the Village’s proposed language, employees successfully completing the program under the Officer Agreement will receive \$250 and under the Firefighter Agreement will receive either \$500 or \$1000. Under the Union’s proposal those qualifying employees will be able to sell back between four and seven days of PTO.

Looking at the salary schedules provided to me (which is the result of my adopting the Village’s wage offer in the *Award*) and because most of the employees fall into the upper tiers on the salary schedule in terms of years of service, the Village’s proposed language for the WFI incentives shows the following:¹³

¹³ Village Exh. 38 (Personnel Statistics as of June 30, 2013). According to the submitted salary schedule for the Officer Agreement, Bureau Chief has three steps with corresponding higher wage rates. Bureau Chief Step 1 has been used for this analysis. Also, as of this writing, I am
[footnote continued]

IMPACT OF VILLAGE PROPOSED LANGUAGE

Rank (15 years)	Annual Salary (1/1/14)	WFI Incentive Percent Of Pay (If \$1,000)	WFI Incentive Percent Of Pay (If \$500)	WFI Incentive Percent Of Pay (If \$250)
Firefighter	84,108	1.19%	0.59%	
FF Paramedic	92,592	1.08%	0.54%	
Engineer	92,592	1.08%	0.54%	
Lieutenant	98,976	1.01%	0.50%	
Fire Captain	104,784			0.24%
Bureau Chief	108,744			0.23%
Battalion Chief	109,956			0.23%
Assist. Chief	112,704			0.22%

Rank (20 years)	Annual Salary (1/1/14)	WFI Incentive Percent Of Pay (If \$1,000)	WFI Incentive Percent Of Pay (If \$500)	WFI Incentive Percent Of Pay (If \$250)
Firefighter	84,948	1.18%	0.59%	
FF Paramedic	93,516	1.07%	0.53%	
Engineer	93,516	1.07%	0.53%	
Lieutenant	99,972	1.00%	0.50%	
Fire Captain	105,828			0.24%
Bureau Chief	109,788			0.23%
Battalion Chief	110,976			0.22%
Assist. Chief	113,748			0.22%

[continuation of footnote]

advised that the parties have not finalized the salary schedules. There may be differences that have yet to be ironed out, but these are the current numbers submitted by the Village on January 23, 2015.

The percentage is calculated by dividing the incentive benefit offered (i.e., \$1,000, \$500 or \$250) by the annual salary.

Village of Oak Lawn and Oak Lawn Firefighters Local 3405, IAFF
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Rank (25 years)	Annual Salary (1/1/14)	WFI Incentive Percent Of Pay (If \$1,000)	WFI Incentive Percent Of Pay (If \$500)	WFI Incentive Percent Of Pay (If \$250)
Firefighter	85,788	1.16%	0.58%	
FF Paramedic	94,452	1.06%	0.53%	
Engineer	94,452	1.06%	0.53%	
Lieutenant	100,968	1.00%	0.49%	
Fire Captain	106,872			0.24%
Bureau Chief	110,832			0.22%
Battalion Chief	111,996			0.22%
Assist. Chief	114,792			0.22%

Putting aside the new conditions that the Village's proposed language place on the receipt of stipends as discussed *supra*, for the employees with the years of service set forth in the above tables, the Village's proposed language which maintains the stipend levels at the same levels as existed in the predecessor Agreements shows those stipends to be a very small percentage of the employees' annual salary – particularly in the Officer Agreement (0.22% to 0.24%). Further, under the Village's proposed language, if unchanged because they become the *status quo* for future agreements, those stipend percentages will naturally decrease as the years pass because the stipends remain the same, but the salaries increase. The bottom line here is that stipends under the Village's proposed language (which will be between 0.22% and 1.19% at the end of the Agreements on December 31, 2014) have not worked as an incentive to curb sick leave usage or meet the other goals of WFI. Otherwise, as explained in the *Award*, the parties would not have agreed to implement the concept of WFI as the established *status quo*.¹⁴ There is no reason to believe that

¹⁴ *Award* at 69. See also, the Village's Initial Final Offer where WFI was proposed by the Village. *Id.* at 70.

these small percentage stipends which will naturally decrease under the Village's proposed language will do anything to "... serve as an incentive for WFI" as required by the *Award*.

Third, the Union's takes a completely different approach and I find that approach will better "... serve as an incentive for WFI". Under the Union's approach and with the requirements for participation in WFI, if the employees keep their usage of paid time off below specified levels, if they choose, the employees can be paid for specified levels of paid time off through cash outs. That, in my opinion, is a better "incentive" for employees to not use paid time off and successfully participate in WFI than the approach proposed by the Village, which has not worked.

Fourth, by adopting the Union's approach, employees will have the opportunity to cash out portions paid time off which are not used. However, by keeping the use of paid time off down through imposition of a better incentive for WFI as proposed by the Union, the Village will less likely be put in a position of having to hire back employees at overtime rates to fill positions open due to absences, which may well prove more costly in the long run than the cashing out of certain days per year for employees who maintain low levels of paid time off usage.

Fifth, in their language proposals, both parties look to the "IAFF/IAFC Wellness Fitness Initiative" [WFI].¹⁵ According to the evidence provided in the

¹⁵ In their submitted language proposals, there is no dispute between the parties over the inclusion of that language in Section 5.16 of the Firefighter Agreement and Section 5.15 of the Officer Agreement.

initial hearings from “The Fire Service Joint Labor Management Wellness-Fitness Initiative” (3rd ed.) at 54:¹⁶

... [F]ire department wellness programs do make economic sense and that adopting and implementing an occupational wellness program, such as the WFI, alone can reduce the occupational claims and costs by while simultaneously improving the quality and longevity of a fire fighter’s life. In addition, adoption of the WFI is an important first step in setting up a medical screening and wellness program for fire departments. ...

And that same report showed that WFI programs provide “... a positive return on investment”¹⁷ Therefore, it makes sense to provide for a real incentive for employees to succeed in WFI (as the Union’s proposed language does) and not one that continues prior stipends that will gradually reduce in percentage value and now have new conditions placed upon receipt of those stipends (as the Village’s proposed language does).

Sixth, while the Union argues that its WFI language proposal will save the Village money, I recognize from the Village’s arguments that there are obvious cost implications to the Union’s proposal which are potentially greater than costs under the Village’s proposals. As the Village argues, the potential selling back of between four and seven days of paid time off for employees who succeed in the program could translate into significant dollars. But it is unknown how many employees will qualify for selling back PTO days (either through minimum PTO bank requirements or usage limits) and whether the employees will choose to sell back days or hold the days to use under circumstances for

¹⁶ Union Exh. 5 at Tab 2.

¹⁷ *Id.*

which they were intended. However, important here is that programs such as WFI provide “... a positive return on investment”¹⁸ The Union’s proposed language is the better “... language that has the primary goal ... to serve as an incentive for WFI” as required by the *Award*.¹⁹

Seventh, and finally, I can only select one of the two proposals on language. I am left with a Village proposal which places impediments which did not exist in the past on receiving relatively small stipends and now will be stipends which will reduce in percentage value as time passes as opposed to a Union proposal which serves as a better “... incentive for WFI”. In the end, the choice is pretty simple, requiring selection of the Union’s proposed language.

The Union’s proposed language for WFI is therefore adopted.

IV. THE PARTIES’ OTHER ARGUMENTS

The parties’ other arguments do not change the result.

The Union argues that the Village’s proposed language violates my April 30, 2013 Order which allowed the Village to amend its Initial Final Offer with the Union’s assertion that the Village’s proposed language exceeded the scope of what was permitted by that Order. In light of the Union’s prevailing on the merits of this matter, the Union’s argument concerning my prior Order is moot.

During oral argument in this portion of the case, the Village contended that granting the Union’s requested language would cause conflicts with the Illinois Wage Payment and Collection Act, 820 ILCS 115/1, *et seq.* That is not a persuasive argument.

¹⁸ *Id.*

¹⁹ *Id.* at 72.

My authority in this case flows from Section 14(h) of the IPLRA. If there are conflicts resulting from my authority under the IPLRA to fashion the terms of a collective bargaining agreement and the Illinois Wage Payment and Collection Act, sorting out those conflicts is a task for the courts – not for me as an interest arbitrator functioning under the IPLRA. If there are conflicts between the exercise of my authority under the IPLRA and the Illinois Wage Payment and Collection Act, some forum other than this one will have to sort that all out.²⁰

²⁰ This argument advanced by the Village is no different from situations where arbitrators are faced with arguments that enforcement of language in a collective bargaining agreement may conflict with statutory and constitutional provisions or public policy. In those cases, the asserted conflicts are to be resolved by the courts and not by arbitrators. *See Alexander v. Gardner-Denver, Co.*, 415 U.S. 36, 53-54, 57 (1974) [quoting *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)]:

[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement ...

* * *

... Thus the arbitrator has authority to resolve only questions of contractual rights

* * *

... [T]he specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land [T]he resolution of statutory or constitutional issues is a primary responsibility of courts

See also, State of Illinois v. AFSCME, 2014 IL App (1st) 1-13-0262 (September 30, 2014), (petition for leave to appeal filed January 13, 2015, Docket No. 118422) slip op. at ¶¶ 12, 29, 34, where the First District Appellate Court enforced one of my awards after I refused to consider arguments based upon authority (statutory, constitutional and public policy) outside of the collective bargaining agreement in that case:

Benn added that the CBA [collective bargaining agreement] did not permit him to add language to the CBA or the CSAs [negotiated CBA modifications] based on his interpretation of the [Section 21 of the Illinois Public Labor Relations] Act. Benn refused to address constitutional and public policy issues the State raised, as Benn found that resolution of those issues exceeded the scope of the authority the CBA and CSAs conferred on him.

* * *

... The contract for arbitration defines the arbitrator's authority, and if that contract does not permit the arbitrator to consider questions of public policy, he should not consider questions of public policy.

* * *

... [T]he CBA expressly limited his powers, and did not permit him to rewrite the CBA and the CSAs, nor did it permit him to ignore the promises therein.

The First District's opinion is found at:

www.state.il.us/court/Opinions/AppellateCourt/2014/1stDistrict/1130262.pdf

[footnote continued]

V. SUPPLEMENTAL AWARD

The Union's proposed language for Wellness Fitness Initiative for the Firefighter and Officer Agreements is adopted.



Edwin H. Benn
Arbitrator

Dated: January 26, 2015

[continuation of footnote]

The same analysis applies here. I have authority under the IPLRA to formulate terms for the Agreements in this case. I have no authority to resolve any conflict issue raised by the Village as to whether my authority exercised under the IPLRA conflicts with the Illinois Wage Payment and Collection Act.